

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PALOS VERDES PENINSULA UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2011060181

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On June 1, 2011, Marcy Tiffany, attorney for Student, filed a Due Process Hearing Request¹ (complaint) against the Palos Verdes Peninsula Unified School District (District). On June 9, 2011, Adam J. Newman, attorney for District, filed a Notice of Insufficiency (NOI) as to Student's complaint. The Office of Administrative Hearings (OAH) granted the NOI on June 22, 2011, and gave Student 14 days to file an amended complaint

On June 27, 2011, Student filed an amended complaint. On July 7, 2011, the District filed an NOI as to the amended complaint. On June 8, 2011, Student filed a response to the NOI.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.² The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of title 20 United States Code section 1415(b)(7)(A).

A complaint is sufficient if it contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education (FAPE) to the child; (2) facts relating to the problem; and (3) a proposed

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

² 20 U.S.C. § 1415(b) & (c).

resolution of the problem to the extent known and available to the party at the time.³ These requirements prevent vague and confusing complaints, and promote fairness by providing the named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.⁴

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁵ The pleading requirements should be liberally construed in light of the broad remedial purposes of the Individuals with Disabilities Education Act and the relative informality of the due process hearings it authorizes.⁶ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁷

DISCUSSION

Student’s amended complaint contains two issues for hearing, alleging that during the 2008-2009, 2009-2010 and 2010-2011 school years the District failed to adequately address his behavioral, reading and academic deficits, and did not offer Student appropriate services and placement to meet his unique needs. For both issues, Student alleges sufficient facts as to his unique needs, the individualized education programs at issue, his lack of progress and the District’s offer of goals, services and placement. Additionally, Student alleges sufficient facts as to procedural violations regarding the District’s purported failure to timely and appropriately assess Student, including setting forth the areas of suspected disability that needed to be assessed. Therefore, Issues 1 and 2 contain sufficient factual allegations as to Student’s contentions.

Student’s proposed resolutions requests compensatory education and the type requested. A complaint is required to include proposed resolutions to the problem, to the

³ 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

⁴ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁵ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁶ *Alexandra R. v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, No. 06-cv-0215-JL) 2009 WL 2957991 at p.3 [nonpub. opn.]; *Escambia County Board of Educ. v. Benton* (S.D.Ala. 2005) 406 F. Supp.2d 1248, 1259-1260; *Sammons v. Polk County School Bd.* (M.D. Fla., Oct. 28, 2005, No. 8:04CV2657T24EAJ) 2005 WL 2850076 at p. 3 [nonpub. opn.] ; but cf. *M.S.-G. v. Lenape Regional High School Dist.* (3d Cir. 2009) 306 Fed.Appx. 772, at p. 3 [nonpub. opn.].

⁷ Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, 71 Fed.Reg. 46540-46541, 46699 (Aug. 14, 2006).

extent known and available to the party at the time. (20 U.S.C. §1415(b)(7)(A)(ii)(IV).) The proposed resolutions stated in Student's complaint are well-defined, and therefore meet the statutorily required standard of stating a resolution to the extent known and available at the time.

Accordingly, the complaint is sufficiently pled to put the District on notice as to the basis of Student's claims and proposed resolutions to permit the District to respond to the complaint and participate in a resolution session and mediation.

ORDER

1. The complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: July 8, 2011

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings