

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CUPERTINO UNION SCHOOL
DISTRICT.

OAH CASE NO. 2011070771

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On July 21, 2011, Parent on behalf of Student, filed a Due Process Hearing Request¹ (complaint) naming Cupertino Union School District (District). On August 1, 2011, Jeffery W. Maisen, Attorney for District filed a Notice of Insufficiency (NOI) as to Student's complaint.

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 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

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).

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

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 complaint alleges three claims in the complaint, which are all insufficiently pled as discussed below.

Issue No. 1: “Despite repeated request through IEP [individualized education program] meetings the school district denied appropriate methods and programs for the child. The IEP, assessments and other reports prepared and imposed on the child by the Cupertino Union School District are inappropriate, hoax and capricious.”

With respect to Issue No. 1, Student fails to provide an adequate description of the nature of the problem so that District can understand the problem. He fails to state the time period involved and fails to describe how District denied Student a FAPE by failing to allege how the IEP, assessments and other reports failed to meet Student’s needs other than to conclude that they are inappropriate.

Issue No. 2: “On observation, the child has not learned or improved anything but regressed with the school’s program. The school staff gave false progress report of the IEP

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).

goals set. The conduct of the school teacher and staff towards the innocent special child and the parents is absurd and non-cooperative. The child has not been supervised adequately in the school premises. Due to this, the parents are also hurt sentimentally and religiously.”

With respect to Issue No. 2, Student fails to provide an adequate description of the nature of the problem so that District can understand the problem. He fails to state the time period involved, particularly what IEP and what goals.

Issue No. 3: “The child is denied of required 40 hours ABA [Applied Behavior Analysis] per week though the child has been diagnosed with ‘Severe Autism Spectrum Disorder’ by pediatricians, neurologist, child and adolescent psychiatrists, psychologists and also, by the child’s school district. Our request for the basic need of 10 hours per week in-home ABA after school hours by certified ABA personnel has also been denied by the school district.”

With respect to Issue No. 3, Student fails to provide an adequate description of the nature of the problem so that District can understand the problem. While Student has identified a problem, that the parties dispute the amount of ABA necessary for Student, he fails to state the time period involved.

Student’s complaint is insufficiently pled in that it fails to provide District with the required notice of a description of the problem and the facts relating to the problem so that District may prepare a defense, and participate in a resolution session and mediation.

MEDIATOR ASSISTANCE FOR NON-REPRESENTED PARENTS: A parent who is not represented by an attorney may request that the Office of Administrative Hearings (OAH) provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint.⁸ Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

ORDER

1. Student’s complaint is insufficiently pled under section title 20 United States Code 1415(c)(2)(D).

2. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).⁹

8 Ed. Code, § 56505.

⁹ The filing of an amended complaint will restart the applicable timelines for a due process hearing.

3. The amended complaint shall comply with the requirements of title 20 United States Code section 1415(b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.

4. If Student fails to file a timely amended complaint, the complaint will be dismissed.

5. All dates previously set in this matter are vacated.

Dated: August 1, 2011

/s/

MICHAEL G. BARTH
Administrative Law Judge
Office of Administrative Hearings