

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOWELL JOINT SCHOOL DISTRICT.

OAH CASE NO. 2011120923

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On December 28, 2011, Student filed a Due Process Hearing Request¹ (complaint) against the Lowell Joint School District (District) with the Office of Administrative Hearings (OAH).² On January 6, 2012, the District filed a Notice of Insufficiency (NOI) as to Student's complaint. On January 9, 2012, Student filed a response.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.³ 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,

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 On November 22, 2011, Student filed a complaint against the District in OAH Case No. 2011110992. On December 12, 2011, OAH granted the District's Notice of Insufficiency and gave Student 14 days to file an amended complaint, which would have been December 27, 2011, as December 26, 2011, was a holiday. The order stated that the complaint would be dismissed if Student did not file a timely amended complaint. OAH did not receive the amended complaint on December 27, 2011, and issued a notice of dismissal on December 28, 2011. OAH received the amended complaint subsequent to the dismissal order, and therefore opened a new case.

³ 20 U.S.C. § 1415(b) & (c).

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.⁴ 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.⁵

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁶ 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.⁷ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁸

DISCUSSION

Student’s complaint contains two issues for hearing regarding the District’s alleged failure to offer him an individualized educational program (IEP) that provided him with a FAPE and predetermining its IEP offer.⁹

As to Issues 1 and 2, Student alleges sufficient facts in the each of the eleven sub-issues in each issue that the District denied Student a FAPE by failing to properly assess him, offering inadequate goals, proposing a placement that did not address his unique needs and

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

⁵ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁶ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁷ *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.].

⁸ 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).

⁹ Issue 3 does not allege any specific violations against the District, but is simply a request for compensatory education based on the District’s purported violations.

was not the least restrictive environment and predetermining its IEP offer. Student's complaint addressed the concerns raised in the December 12, 2011 order in OAH Case No. 2011110992. Therefore, Issues 1 and 2 are sufficiently pled.

Student's proposed resolutions requests compensatory education, one-to-one aide support, placement on a small campus, preferable operated by a non-public agency, counseling, transportation, reimbursement and extended school year services. A complaint is required to include proposed resolutions to the problem, to the 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.

Therefore, Student's complaint is sufficiently pled to put the District on notice as to the basis of Student's claims 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: January 18, 2012

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings