

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PASO ROBLES JOINT UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2012060172

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On June 01, 2012, Student filed a Due Process Hearing Request¹ (complaint) naming Paso Robles Joint Unified School District (District). On June 13, 2012, District timely 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 named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.⁴

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).

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

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 IDEA 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

For 18 pages, Student generally narrates the interaction between the District and Parent, from 2007 to the filing of the action. Student’s complaint then lists four (4) issues.

Issue One

Issue One claims that District failed to implement the portions of his November 2009 annual IEP, to which Parent had consented, thus denying Student a FAPE. Issue One does not specify which services Parent consented to and what services District failed to implement. Student discusses the interaction between Parent and District regarding implementation of portions of the November 2009 annual IEP in the complaint’s earlier narrative. However, Student does not state what the District failed to implement. Without some statement of what services Student claims were not implemented, Issue One fails to provide sufficient information to enable District to prepare for the hearing and participate in resolution sessions and mediation.

Issue Two

Issue Two asserts that District failed to create IEPs which were reasonably calculated to render meaningful education benefit in all areas of special education need throughout the statutory period, thus denying Student a FAPE. This issue statement is a broad general assertion which fails to inform the District about which IEP’s are at issue and what services

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).

to which Student refers. As if to explain what Issue Two means, Student adds a few narrative paragraphs.

Student states that the November 2009 IEP failed to provide a FAPE and that Student seeks to make the November 2009 IEP offer an issue, though it preceded the statutory two-year limitation period. How or why the 2009 IEP fails to provide a FAPE is unclear. As for the October 2010 IEP, Student generally stated it was “fraught with technical errors and substantive deficiencies that resulted in the Student’s mother giving only partial consent incrementally with each new revision until finally arriving at a complete consented-to IEP well into the annual period.” Though Student refers to this process in the complaint’s long narrative, which also discusses the October 2010 IEP’s inaccurate PLOPs and inappropriate goals, Issue Two asserts other, unspecified deficiencies which denied Student a FAPE.

Student also states that the September 2011 IEP was not finalized until March 2012 “with a belated AT assessment that was substantively deficient.” Even when read within the context of the first 18 pages of narrative, it is unclear if Student is claiming the AT assessment should have been performed before Parent requested, was procedurally late (amounting to a failure of FAPE), the AT assessment itself was inappropriate, or that District failed to provide AT in accordance with assessment recommendations.

In explaining Issue Two, Student states that “. . . District’s offer of academic, mental health, functional/adaptive, and vocational skills programing had been substantively insufficient,” throughout the statutory period (p. 19). This statement lacks sufficient specificity. The complaint’s long narrative regarding mental health services and mobility training refers to the September 2011 IEP and does not specify how District’s offer failed to address these areas in the other IEPs or offers.

Even when read within the context of the complaint’s long narrative, Issue Two is overbroad, vague and confusing. Issue Two does not provide District with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.

Issue Three

Issue Three asserts that the District failed to deliver services in a manner that resulted in meaningful educational benefit in all areas of special education need throughout the statutory period, thereby denying Student a FAPE. Student then states that Issue Three is referring to lack of services in written language, reading comprehension, math concepts and applications, communication, social skills, self-help skills functional/adaptive skills, mental health, and vocational skills. However, even when read within the context of the complaint’s narrative, Student is unclear as to which IEPs, what services, and what offers are included in Issue Three. Issue Three lumps more than two years of IEPs, offers, assessments, and services into one general assertion and, thus, is vague and confusing. Issue Three is insufficient.

Issue Four

Issue Four states that District failed to develop appropriate goals and implement appropriate services relative to his transition into postsecondary education, thereby denying Student a FAPE. The complaint states that Issue Four refers to the time period of September 2011 to present, regarding goals, transition assessments (training, education, employment and independent living skills), mobility training, and workability, related to Student's transition plan. Read within the context of the complaint's entire narrative, Issue Four sufficiently describes the nature of the problem, asserting facts relating to Student's transition plan and services, providing District with sufficient information to enable it to prepare for hearing and participate in resolution session and mediation.

ORDER

1. Issue Four of Student's complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).
2. Issues One, Two, and Three of Student's complaint are insufficiently pled under Title 20 United States Code section 1415(c)(2)(D).
3. Student shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II). The filing of an amended complaint will restart the applicable timelines for a due process hearing.
4. 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.
5. If Student fails to timely file an amended complaint, the due process hearing shall proceed on Issue Four, only, on the presently scheduled dates.

Dated: June 18, 2012

/s/

CLIFFORD H WOOSLEY
Administrative Law Judge
Office of Administrative Hearings