

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

UPLAND UNIFIED SCHOOL DISTRICT,
AND SAN BERNARDINO COUNTY
SUPERINTENDENT OF SCHOOLS.

OAH CASE NO. 2012070418

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On July 13, 2012, Parent on behalf of Student (Student) filed a Due Process Hearing Request¹ (complaint) naming the Upland Unified School District (District) and San Bernardino County Superintendent of Schools (Superintendent).

On July 27, 2012, attorney Jack B. Clarke Jr., representing the District and Superintendent, timely filed a Notice of Insufficiency (NOI) as to Student's complaint.² On July 30, 2012, Student filed an opposition.

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, evaluation, or educational placement of the child, or the provision of a free appropriate

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 District and Superintendent also filed a motion to dismiss which will be addressed in a separate order.

³ 20 U.S.C. § 1415(b) & (c).

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 alleges that she resides with her parents in Upland, California, and will be going into the eleventh grade in the fall of 2012. The District first found her eligible for special education in 2005. Student has been attending private school since the 2006-2007 school year (SY). Student further alleges, that since at least spring of 2008, Parent requested the District re-assess Student for special education services and provide a FAPE. Student contends that the District informed Parent in spring of 2008 that it was not responsible for assessing Student; that Parent must schedule an assessment through Claremont Unified School District, the district of Student’s school of attendance; and, that the District was unable to conduct Student’s triennial individualized educational program (IEP) meeting and offer a FAPE for the 2008-2009 SY without the assessment data.

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).

Student's complaint raises the following issues: 1) Whether the District failed to make an offer of FAPE for the 2009-2010 SY and extended school year (ESY); 2) Whether the District failed to make an offer of FAPE for the 2010-2011 SY and ESY; and 3) Whether the District's denial of a FAPE resulted in denials of Student's rights under state and federal civil rights laws? Student more specifically asserts, that the District failed to timely and appropriately assess her in all suspected areas of disability, failed to convene any IEP team meeting thereby denying her Parent the ability to meaningfully participate in the development of an IEP, failed to make a formal written offer of a placement and services, and failed to provide prior written notice.

Student's complaint includes a proposed resolution seeking an Order that the District denied Student a FAPE for the 2009-2010 and 2010-2011 SY's and ESY's and for compensatory education in the form of reimbursement for Student's private placement and services.

The District and Superintendent argue exclusively in their NOI that the complaint lacks specificity for the remedies sought. The District and Superintendent do not challenge the sufficiency of the remainder of Student's complaint. 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).) Student has met the statutorily required standard of stating a resolution to the extent known and available to her at the time. Student's proposed remedy can be further clarified at the prehearing conference. Student will be required to present admissible evidence of any expenditures for which she seeks reimbursement at the time of hearing.

The facts alleged in Student's complaint are sufficient to put the District and Superintendent on notice of the issues forming the basis of the complaint and the proposed relief sought by Student. The complaint identifies the issues and adequate related facts about the problem to permit the District and Superintendent to respond to the complaint and participate in a resolution session, mediation and a due process hearing.

Therefore, Student's complaint is sufficient.⁹

ORDER

1. The complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).

⁹ Although Student's Issue Three is found sufficient, it is subject to a motion to dismiss as facially outside the jurisdiction of OAH. This motion is addressed in a separate order.

2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: July 31, 2012

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings