

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ELK GROVE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012080410

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On August 14, 2012, Student filed a Due Process Hearing Request¹ (complaint) with the Office of Administrative Hearings, naming the Elk Grove Unified School District (District). On August 29, 2012, the 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) and Education Code section 56502, subdivision (c)(1).

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); Ed. Code 56502, subd. § (d)(1).

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 contains four issues for hearing regarding the District’s alleged failure to timely assess him for special education eligibility and not producing requested educational records. As to Issue 1, Student’s complaint contains an adequate narrative regarding his educational struggles and needs, and why Student might be eligible for special education services. The complaint provides the District with adequate notice as to when and why the District should allegedly have assessed him for special education eligibility on or after August 14, 2010. Accordingly, Student alleges sufficient facts supporting these claims to put the District on notice, and therefore this claim is sufficient.

As to Issue 2, the complaint contains sufficient allegations that the District failed to assess him in all areas of suspected disability by setting forth the areas of possible special education eligibility, student’s suspected disabilities and the assessments the District should have conducted. Accordingly, Student alleges sufficient facts supporting these claims to put the District on notice, and therefore this claim is sufficient.

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).

As to Issue 3, the complaint contains sufficient allegations that Student is eligible for special education services, specifies the areas of eligibility and the educational program that the District should have offered, and therefore denied him a FAPE. Accordingly, Student alleges sufficient facts supporting these claims to put the District on notice, and therefore this claim is sufficient.

As to Issue 4, the complaint contains sufficient allegations that the District failed to produce to Parent a complete copy of Student's educational records and that this significantly impeded Parent's ability to participate in Student's educational decision making process. Accordingly, Student alleges sufficient facts supporting these claims to put the District on notice, and therefore this claim is sufficient.

Student's proposed resolution is that the District fund independent educational evaluations (IEE's), convene an IEP team meeting to discuss the results of these IEE's and develop an appropriate individualized education program, which includes placement at a non-public school and provide compensatory education. 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 resolution stated in Student's complaint is well-defined and meets the statutorily required standard of stating a resolution to the extent known and available to Student at the time.

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: August 31, 2012

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings