

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

LOS GATOS/SARATOGA JOINT UNION
SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2010060050

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On June 25, 2010, Carolyn Nedley, attorney, filed a First Amended Due Process Hearing Request¹ (Complaint) on behalf of the Student, which named Los Gatos Union School District and Los Gatos-Saratoga Joint Union High School District (Districts).

On July 9, 2010, Malanie Larzul, attorney for Districts 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 ALJ.⁷

DISCUSSION

The facts alleged in student’s complaint are sufficient to put the districts on notice of the issues forming the basis of the complaint. Student’s complaint identifies the issues and adequate related facts about the problem to permit districts to respond to the complaint. The four issues identified are discussed individually as follows:

Student’s first claim alleges that from at least⁸June 25, 2008, through June 25, 2009, Districts denied student a FAPE by failing to timely identify him as a child with a disability. Student identifies adequate related facts about the problem, including the nature of the disability; a history of Student’s interactions with Districts’; assessments, both school and private; Student’s performance history; and notifications to Districts from Student.

Student’s second claim alleges that Districts denied student a FAPE from at least June 25, 2008, to June 25, 2010, by failing to assess him in all suspected areas of disability. Student identifies adequate related facts about the problem, including the nature of Student’s disability, alternatives that Districts could have considered and Student’s history of informing Districts of information related to his perceived disabilities.

Student’s third claim alleges that Districts failed to meet Students’ unique needs from at least June 25, 2008, to June 25, 2010, by denying his special education eligibility, and providing him with inadequate accommodations. Student identifies adequate related facts about the problem, including a detailed and specific history of Student’s school performance and Student’s communications with Districts.

Student’s fourth claim alleges that Districts denied student a FAPE by failing to provide prior written notices thus violating Student’s procedural rights from at least June 25, 2008. Student identifies adequate related facts about the problem, including a history of

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).

⁸ Issues related to the statute of limitations may be addressed either as an affirmative defense at hearing or in a motion to dismiss.

Student's interactions with the Districts; a history of Student's school performance; and a history of Student's communications with the Districts.

Student provides proposed resolutions of the problems to the extent known and available at the time, including an individualized educational program; independent educational evaluations, compensatory education, psychological or behavioral counseling, and attorney's fees.

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: July 13, 2010

/s/

MICHAEL G. BARTH
Administrative Law Judge
Office of Administrative Hearings