

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MT. DIABLO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010061370

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On June 21, 2010 Parent, on behalf of Student, filed a Due Process Hearing Request¹ (complaint) naming Mount Diablo Unified School District (District).

On July 1, 2010, Matthew Juhl-Darlington, attorney for District, filed a Notice of Insufficiency (NOI) as to Student's complaint.²

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 section 1415(b)(7)(A).

The complaint is deemed sufficient unless a party notifies the Office of Administrative Hearings and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements.⁴

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

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 received the complaint on June 10, 2010, and filed a NOI with the Office of Administrative Hearings (OAH) on June 22, 2010. OAH received the complaint on June 21, 2010, and opened a case file on June 30, 2010. OAH sent out a scheduling order on July 1, 2010. District filed another NOI with OAH on July 1, 2010. District's NOI was filed within the statutorily required timeline.

³ 20 U.S.C. § 1415(b) & (c).

⁴ 20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).

resolution of the problem to the extent known and available to the party at the time.⁵ 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.⁶

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁷ 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.⁸ Whether the complaint is sufficient is a matter within the sound discretion of the administrative law judge.⁹

DISCUSSION

Student’s complaint alleges 11 claims in the complaint. The issues are discussed below.

With regard to issue one, Student alleges that on or about June 24, 2009, District failed to provide Student with access to the general education curriculum, failed to assist Student with make-up credits or assignments, and failed to conduct required training. Student has stated sufficient facts supporting this claim, and the claim is sufficient.

With regard to issue two, Student alleges his general education teachers were not qualified to instruct special education students during the 2007-2008 and 2008-2009 school years. Student has stated sufficient facts supporting this claim, and the claim is sufficient.

With regard to issue three, Student alleges that District for the 2007-2008 school year failed to provide the necessary support and accommodations for his algebra class as required by his individualized education program IEP. Student has stated sufficient facts supporting this claim, and the claim is sufficient.

With regard to issue four, Student alleges District failed to follow his IEP dated May 22, 2009. Student alleges District failed to develop and coordinate a plan for Student to successfully complete his courses, failed to notify and communicate with Parents, and failed

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

⁶ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁷ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁸ *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.].

⁹ 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 implement agreed upon computer software as required by his IEP. Student has stated sufficient facts supporting this claim, and the claim is sufficient.

With regard to issues five six, seven, and nine, Student alleges District failed to follow his IEPs dated July 24, 2009, August 28, 2009, October 12, 2009, and January 28, 2010, respectively, by failing to inform Parents of Student's progress. Student has stated sufficient facts supporting these claims, and the claims are sufficient.

With regard to issue eight, Student alleges that on October 12, 2009, District failed to provide Student the necessary support to take the SAT exam. Student has stated sufficient facts supporting this claim, and the claim is sufficient.

With regard to issue 10, Student alleges District changed his IEP without his consent on December 17, 2009. Student has stated sufficient facts supporting this claim, and the claim is sufficient.

With regard to issue 11, Student alleges District were unprepared for an IEP team meeting on May 26, 2010. Student has stated sufficient facts supporting this claim, and the claim is sufficient.

Therefore, Student's statement of the 11 claims is sufficient. Student does not expressly allege if the issues in the complaint are cognizable under the identification, evaluation, or educational placement of Student, or as a denial of FAPE. However, reading the complaint in its entirety and liberally construing in light of the broad remedial purposes of the IDEA and the relative informality of the due process hearings, it is reasonable to infer that the issues are alleged to have resulted in a denial of FAPE. Student is advised to further clarify and define the issues in preparation for the prehearing conference and due process hearing.

District alleges Student's claims are outside of OAH's jurisdiction. The only determination to be made upon the filing of an NOI is the sufficiency of the complaint on its face. Jurisdictional contentions may be presented at hearing as an affirmative defense, or addressed in a Motion to Dismiss supported by sufficient facts.

Student's proposed resolutions request that District give Student course credit, transition assistance, continued support as required in his IEP, and additional training for teachers and school staff. The proposed resolutions stated in Student's complaint are not well-defined. However, Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

ORDER

1. The complaint is sufficient under section 1415(b)(7)(A)(ii).

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

Dated: July 08, 2010

/s/

TROY K. TAIRA
Administrative Law Judge
Office of Administrative Hearings