

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

REDONDO BEACH UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010080358

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On August 9, 2010, attorney Bruce Bothwell, on behalf of Student, filed a Due Process Hearing Request¹ (complaint) against Redondo Beach Unified School District (District). On August 19, 2010, attorney Nancy Finch-Heurman, on behalf of 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).

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

Student’s complaint raises five issues for determination. Issue No. 1 in Student’s complaint asserts that the District’s proposed May 10, 2010 individualized education program (IEP) denied Student a FAPE because the District’s offer of 10 hours a week of behavior intervention services and special day preschool was not sufficient to meet her unique needs. Student provides a sufficient factual basis regarding her deficits, the District’s offer and why the District’s offer failed to address her unique needs. Accordingly, Issue No. 1 is legally sufficient.

Issue No. 2 in Student’s complaint contends that the District proposed May 10, 2010 IEP was not scientifically based, to the extent practicable, based on peer-reviewed research. Student’s complaint does not contain sufficient information why the District’s IEP was not scientifically based, to the extent practicable, based on peer-reviewed research as the complaint only contains a declaratory contention with no explanation for this assertion. Accordingly, Issue No. 2 is not legally sufficient.

Regarding Issue No. 3, Student alleges that the District denied Student a FAPE because the May 10, 2010 IEP did not include a behavior support plan. Student provides a sufficient factual basis regarding her behavioral deficits, the District’s offer and why she requires a behavior support plan to address her unique needs. Accordingly, Issue No. 3 is legally sufficient.

Issue No. 4 in Student’s complaint asserts that the District proposed speech and language services, classroom and safety goals are not sufficient to meet her unique needs. Student provides a sufficient factual basis regarding her deficits, the District’s proposed

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).

goals and why the District's offer failed to address her unique needs. Accordingly, Issue No. 4 is legally sufficient.

Finally, Issue No. 5 in Student's complaint contends that the District denied Student a FAPE because it predetermined its May 10, 2010 IEP offer. Student provides a sufficient factual basis regarding the District's purported predetermination of its offer of services and placement. Accordingly, Issue No. 4 is legally sufficient.

Regarding Issue 2, Student's complaint is insufficiently pled in that it fails to provide the District with the required notice of a description of the problem and the facts relating to the problem. Regarding Issues 1, 3, 4, and 5, Student's complaint contains sufficient facts to put the District on notice.

ORDER

1. Issues 1, 3, 4, and 5 of Student's complaint are sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).

2. Issue 2 of Student's complaint is 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).⁸

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 file a timely amended complaint, the hearing shall proceed only on Issues 1, 3, 4, and 5 of Student's complaint.

Dated: August 25, 2010

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings

⁸ The filing of an amended complaint will restart the applicable timelines for a due process hearing.