

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PLEASANT VALLEY SCHOOL
DISTRICT, AND VENTURA COUNTY
OFFICE OF EDUCATION.

OAH CASE NO. 2010120009

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On November 29, 2010, Student filed a Due Process Hearing Request¹ (complaint) naming Pleasant Valley School District (District) and the Ventura County Office of Education (VCOE) as respondents. On December 14, 2010, District and VCOE filed a Notice of Insufficiency (NOI) as to Student's complaint, contending that Student failed to provide specific facts describing respondents' alleged failure to provide Student with an appropriate placement, and with appropriate related services and supports. In addition, respondents contend that Student's proposed resolutions are vague and fail to relate to the problems alleged in the 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

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).

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

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 Administrative Law Judge.⁷

DISCUSSION

Student’s complaint contains four issues, two of which are sufficient and two which are insufficient. The issues are discussed below.

Issue One, which alleges that VCOE failed to provide Student with an appropriate educational placement from November 2008 to January 2010, is sufficiently pled to put VCOE on notice as to the basis of Student’s claims. Specifically, Student alleges that Student’s placement in VCOE’s special day class (SDC), which was taught by Ms. Chase, was inappropriate, because Student’s class was comprised of “severely behaviorally challenged children.” Consequently, Student imitated many of the bad behaviors exhibited by the other students. In addition, the placement was unsafe, as the other students threw objects in class, and Student had no way of protecting himself. Also, Student, who was non-verbal, endured routine episodes of other students in Ms. Chase’s class taking away his

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.

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).

communication device, denying him access to it for most of his time in Ms. Chase's class. Finally, Student alleges that he had to repeat the third grade due to his lack of productivity in that placement during the 2008-2009 school year. Although the complaint indicates that Student also spent time in Ms. McGilvary's class during the same time period, the bulk of the allegations concern Student's experience in Ms. Chase's class.

Issues Two and Three, which allege that VCOE, and District, respectively, failed to provide Student with appropriate related services and supports, are unclear, at best. Student lists a number of services he received during the statutory period, such as alternative augmentative communication, physical therapy, speech and language therapy, and adaptive physical education, but fails to state how these services were insufficient, or how the services negatively impacted Student's ability to receive some educational benefit. Therefore, Student has failed to state sufficient facts supporting these claims, rendering Issues Two and Three insufficient.

Issue Four, which alleges that District failed to follow legal timelines for an assessment, as well as failed to develop an IEP to document and implement the findings of that assessment, is sufficiently pled. Specifically, Student alleges that District failed to develop an IEP after the completion of a June 10, 2010 Functional Behavioral Assessment report. Therefore, Issue Four is sufficiently pled to put District on notice as to the basis of Student's claims.

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 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. Issues One and Four of Student's complaint are sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

2. Issues Two and Three of Student's complaint are 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

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

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 One and Four of Student's complaint.

Dated: December 20, 2010

/s/

CARLA L. GARRETT
Administrative Law Judge
Office of Administrative Hearings