

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PANAMA-BUENA VISTA UNION
SCHOOL DISTRICT.

OAH CASE NO. 2011040320

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On April 7, 2011 Nicole Hodge Amey, Attorney for Student, filed a Due Process Hearing Request¹ (complaint) naming Panama-Buena Vista Union School District (District).

On April 20, 2011, Monica D. Batanero, attorney for 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

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).

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

The facts alleged in Student’s complaint are sufficient to put the District 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 District to respond to the complaint and participate in a resolution session and mediation. Student presents four issues in his complaint.

1. “For the 2011 [school year], did District fail to offer a free and appropriate public education (FAPE) by failing to provide a transition assessment and plan.” Student alleges that he transferred to the District this year and was previously qualified for special education services under the category of emotional disturbance. These facts are sufficient to place District on notice about the nature of the problem.

2. “For the 2008-2009, 2009-2010 school year, did the District fail to offer a FAPE by a predetermination in placement.” Although it is difficult to understand the claim against District for the 2008-2009 school year, Student alleges that Parent has provided the District with suggestions to assist her son, but District refused to consider these suggestions

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).

to assist Student in his transition to District. These allegations, taken together, are sufficient to place District on notice about the nature of the problem.

3. “Has the District violated Parent’s procedural rights by failing to schedule the IEP [meeting] at a mutually agreeable time and place?” Student alleges that District refused to consider Parent’s schedule when arranging IEP meetings and refused to hold the IEP meeting at Student’s school. These facts are sufficient to place District on notice about the nature of the problem.

4. “Has District violated procedural rights by inviting its attorney to IEP.” Student alleges that District released information regarding Student to its attorney without their consent and invited the attorney to the IEP meeting without informing Parent of the reason for the attorney attending. These facts are sufficient to place District on notice about the nature of the problem.

A complaint is require 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).) Student’s proposed resolution requests that District provide a FAPE to Student; accept a transition assessment and transition plan for Student proposed by a private transition counselor; convene an IEP meeting at a time and place that is mutually agreeable; District not have its attorney at the meeting or pay for Student’s attorney to be present at the meeting; and inform parent of the purpose of having District’s attorney at the meeting. The proposed resolution stated in Student’s complaint meets 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 Title 20 United States Code section 1415(b)(7)(A)(ii).

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

Dated: April 20, 2011

/s/

MICHAEL G. BARTH
Administrative Law Judge
Office of Administrative Hearings