

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PLUMAS UNIFIED SCHOOL DISTRICT,
PLUMAS COUNTY OFFICE OF
EDUCATION AND PLUMAS SPECIAL
EDUCATION LOCAL PLANNING AREA.

OAH CASE NO. 2011120543

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On December 16, 2011, Student filed a Due Process Hearing Request¹ (complaint) naming the Plumas Unified School District (District). On December 30, 2011, the District timely filed a Notice of Insufficiency (NOI) as to Student's complaint. The Office of Administrative Hearings (OAH) granted the District's NOI on January 4, 2012, and gave Student 14 days to file an amended complaint.

Student filed an amended complaint January 18, 2012,² and a corrected amended complaint on the same day, which was substantially similar to the originally received amended complaint, against the District, Plumas County Office of Education (PCOE) and Plumas Special Education Local Planning Area (SELPA). On January 31, 2012, the District, PCOE and SELPA timely filed a Notice of Insufficiency (NOI) as to Student's amended complaint.³

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.⁴ The party filing the complaint is not entitled to a hearing

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 OAH received the completed amended complaint after 5:00 p.m. on January 17, 2012, so it is deemed filed as of the next business day.

³ The District, PCOE and SELPA concurrently filed a motion to dismiss claims beyond the two-year statute of limitations, which shall be addressed in a separate order.

⁴ 20 U.S.C. § 1415(b) & (c).

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.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 Individuals with Disabilities Education Act 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 contains seven issues for hearing regarding the District’s, PCOE’s and SELPA’s alleged failure to provide services to Student, failure to assess, failure to develop an appropriate individualized educational program (IEP) and failure to implement the parties’ settlement agreement, which denied Student a FAPE.

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).

As to Issue 1, Student alleges insufficient facts that the District, PCOE and SELPA denied him a FAPE because a high school principal refused to enroll Student at school after Parent removed Student from a different high school several months previously. Student does not allege sufficient facts to establish that he is entitled to attend this high school. Therefore, Issue 1 is insufficiently pled.

Regarding Issue 2, Student alleges insufficient facts that the District, PCOE and SELPA failed to adequately assess Student in all areas of suspected disability as the amended complaint does not state why the District, PCOE and SELPA needed to assess Student in the nine listed areas. Accordingly, Issue 2 is insufficiently pled.

As to Issue 3, the amended complaint contains adequate allegations that the listed IEP's failed to provide with a FAPE as each IEP was deficient in the nine areas specified in the amended complaint. Therefore, Issue 3 is sufficiently pled.

Regarding Issue 4, Student alleges sufficient facts that the October/November 2008 and May 2010 IEP's failed to provide Student with adequate individualized transition plans. Accordingly, Issue 4 contains sufficient allegations.

As to Issue 5, Student fails to allege sufficient facts regarding Student's purported failure to meet basic proficiency standards as the amended complaint does not allege what standards Student did not meet. Accordingly, Issue 5 is insufficient.

Regarding Issue 6, the amended complaint contains sufficient facts that the District denied a FAPE by failing to comply with the parties' January 6, 2010 settlement agreement by not assessing him. Therefore, Issue 6 is sufficient.

Finally as to Issue 7, the amended complaint does not contain sufficient allegations as the amended complaint is not clear if the District, PCOE and SELPA failed to provide Student with instructional material he needed or if they failed to provide Student with a "prescribed course of Study" and what that should have included. Accordingly, Issue 7 does not contain adequate facts.

Student's proposed resolutions requests that Student attend the California School for the Deaf, that he be assessed and be provided with transitional services. 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 amended complaint are well-defined, and therefore meet the statutorily required standard of stating a resolution to the extent known and available at the time.

Issues 3, 4 and 6 are sufficiently pled to put the District, PCOE and SELPA on notice as to the basis of Student's claims to permit the District, PCOE and SELPA to respond to the amended complaint and participate in a resolution session and mediation.

With regard to Issues 1, 2, 5 and 7, Student fails to allege sufficient facts supporting these claims to put the District, PCOE and SELPA on notice, and therefore these claims are insufficient.

Pursuant to Education Code section 56505, subdivision (e)(6), a parent who is not represented by an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. If Parent requests the assistance of a mediator, she should contact OAH immediately in writing.

ORDER

1. Issues 3, 4 and 6 of Student's amended complaint are sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).

2. Issues 1, 2, 5 and 7 of Student's amended complaint are insufficiently pled under title 20 United States Code section 1415(c)(2)(D).

3. Student shall be permitted to file a second amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).¹⁰

4. The second 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 second amended complaint, the hearing shall proceed only on Issues 3, 4 and 6 in Student's amended complaint.

Dated: February 2, 2012

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings

¹⁰ The filing of an amended complaint will restart the applicable timelines for a due process hearing.