

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

GILROY UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2012020230

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On February 7, 2012, Student filed concurrently an expedited Due Process Hearing Request (expedited complaint) and a non-expedited Due Process Hearing Request¹ (non-expedited complaint) against the Gilroy Unified School District (District). On February 16, 2012, the District filed a Notice of Insufficiency (NOI) as to both the expedited complaint and non-expedited complaint.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the non-expedited 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 non-expedited 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 Individuals with Disabilities Education Improvement Act 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

Title 20 United States Code section 1415(k)(3) permits a party to request an expedited hearing to appeal a decision regarding a disciplinary change of placement, such as placement in an alternative education setting or a manifestation determination regarding student’s conduct. This section requires an expedited hearing to occur within 20 school days of the date the hearing is requested, and for a decision to be rendered within 10 school days of the conclusion of the hearing. With respect to expedited hearing requests, there is no provision similar to that in title 20 United States Code section 1415(c)(2)(A), allowing for the testing of the sufficiency of an expedited hearing request.

DISCUSSION

Student’s complaint contains two non-expedited issues for hearing, Issues 1 and 3, and one expedited issue, Issue 2, for hearing. As to Issue 1, Student fails to allege sufficient facts because while the non-expedited complaint alleges that Student entered the District with an individualized education program (IEP) from the Los Banos Unified School District, the complaint fails to allege sufficient facts about how the District purportedly denied Student a FAPE in relation to this IEP. Accordingly, Issue 1 is insufficiently pled.

In Issue 2, it is not clear if Student alleges that the District failed to convene a manifestation determination meeting before expelling Student or that the District improperly determined at the manifestation determination meeting that the disciplinary conduct was not a manifestation of his disability. However, because an NOI is not available in expedited hearing requests, the District’s NOI as to Issue 2 is denied. This expedited issue may be clarified at the prehearing conference.

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).

As to Issue 3, Student fails to allege sufficient facts as all the Student requests is that the District convene an IEP team meeting since Student no longer attends his prior middle school. Accordingly, Issue 3 is legally insufficient.

Accordingly, the non-expedited complaint, Issues 1 and 3, is insufficiently pled as it fails to include adequate allegations to put the District on notice as to the basis of Student's claims and proposed resolutions to permit the District to respond to the non-expedited complaint and participate in a resolution session and mediation.

ORDER

1. Student's non-expedited complaint, Issues 1 and 3, is insufficiently pled under title 20 United States Code section 1415(c)(2)(D).
2. The District's NOI as to Issue 2 is denied because this is an expedited complaint.
3. Student shall be permitted to file an amended complaint as to the non-expedited issues under title 20 United States Code section 1415(c)(2)(E)(i)(II).⁸
4. The amended non-expedited 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 non-expedited complaint, the non-expedited complaint will be dismissed.
6. All dates previously set in this non-expedited matter are vacated. The expedited matter shall proceed as previously scheduled.

Dated: February 17, 2012

/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.