

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

PALOS VERDES PENINSULA UNIFIED  
SCHOOL DISTRICT.

OAH CASE NO. 2012061158

ORDER OF DETERMINATION OF  
INSUFFICIENCY OF DUE PROCESS  
COMPLAINT

On June 27, 2012, Student, through his parents, filed a Due Process Hearing Request<sup>1</sup> (complaint) with the Office of Administrative Hearings, naming the Palos Verdes Peninsula Unified School District (District).

On July 6, 2012, the District timely 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.<sup>2</sup> 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.<sup>3</sup> These requirements prevent vague and confusing complaints, and promote fairness by providing the

---

<sup>1</sup> 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).

<sup>2</sup> 20 U.S.C. § 1415(b) & (c).

<sup>3</sup> 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.<sup>4</sup>

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”<sup>5</sup> 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.<sup>6</sup> Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.<sup>7</sup>

## DISCUSSION

Student’s complaint alleges six claims, which are all insufficiently pled. In issue one Student contends that the District has failed to provide him with a free appropriate public education (FAPE) from June 2010 to the present. However, neither the issue nor the subsequent factual discussions state any supporting facts for Student’s allegation. Student does not indicate what educational placement or services the District offered him during the time in question and why they was not appropriate for him. Student does not indicate his specific needs nor does he indicate which of those needs were not addressed by the District or why he believes they were not met. Finally, Student fails to state what his appropriate placement and services should have been.

Student’s other issues suffer from the same deficiencies. In issue two, he alleges that the District failed to address each area of his needs from June 2010 to the present with appropriate goals and frequency and duration of required services. However, Student fails to state what those needs were, how they were not addressed, and how he believes they should have been addressed. Nor does Student state which of his goals was inappropriate or why any of them were inappropriate.

---

<sup>4</sup> See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

<sup>5</sup> Sen. Rep. No. 108-185, *supra*, at p. 34.

<sup>6</sup> *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.].

<sup>7</sup> 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).

In issue three, Student again reiterates that the District failed to provide him with a FAPE from June 2010 to the present by not providing him with appropriate programming and support to assist with amelioration of his significant and documented learning needs. Student fails to state why his programming and supports were inappropriate, which of his needs were not specifically being met, why they were not being met, and what the District should have been doing in the alternative.

Issue four contends that the District has failed to provide Student a FAPE from June 2010 to the present because of ongoing harassment, bullying, and humiliation of Student by other pupils. Student contends the District has minimalized and trivialized the emotional impact of these incidents on Student's ability to access the mandated curriculum in a meaningful way. However, Student has not provided any facts regarding the harassment and bullying he states he has faced. He provides no specific instances of harassment or bullying, no description of what occurred, and provides no dates of occurrence. Nor has Student specifically stated how his ability to access his education has been affected by the incidents or the District's alleged lack of appropriate response to them.

In issue five, Student states that the District denied him a FAPE in an individualized education program (IEP) dated March 21, 2012. However, like the deficiencies in Student's first four claims, issue five suffers from the same lack of supporting facts. Student fails to provide any specifics as to why the IEP in question denied him a FAPE. He provides no description of the placement and services offered, and no specifics as to why the District's offer did not meet his needs or what alternative placement or services he believes he required.

Finally, in issue six Student contends that the District's March 21, 2012 IEP offer mislabeled Student as emotionally disturbed without taking into consideration his medical diagnosis of Celiac Disease. Student does not, however, state why his designation of eligibility for special education as emotionally disturbed is improper. Significantly, Student fails to state what portion of the proposed IEP does not address his needs and, if the placement and services offered were not appropriate, why they failed to meet Student's needs. Nor does Student indicate what placement and/or services the District should have alternatively offered him.

Student's factual discussion does nothing to elucidate his claims. There is no information concerning the placement or services or portions of his IEP that Student contends failed to meet his needs and absolutely no indication of the placement and/or services that Student contends should have been offered him. Student's facts often confuse rather than clarify the issues. For example, in a footnote Student states that the District was aware of his medical diagnosis of Celiac Disease at all material times. However, in the body of his complaint, Student states that he did not receive the medical diagnosis of Celiac Disease until 2011, at least six months after the June 2010 date given by Student as when the District began denying him a FAPE.

Student's complaint is insufficiently pled in that it fails to provide the District with the required notice of a description of the problems and the facts relating to the problems. Given the paucity of supporting facts and information, the District cannot properly prepare to participate in resolution or mediation sessions, and cannot properly prepare to defend itself at hearing. For these reasons, all allegations in Student's complaint are deficient as presently stated.

The District also challenges Student's proposed resolutions in his complaint. The District contends that there is either no basis for the proposed resolutions or that there is no nexus between the proposed resolutions and the allegations of Student's complaint. 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).) Although, the District may believe that the proposed resolutions are inappropriate, they are specific and well-defined. Should Student amend his complaint and reiterate his proposed resolutions, he will have the burden at hearing of proving whether they are appropriate should Student prevail on all or a portion of his complaint. Student has therefore met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

#### ORDER

1. Student's complaint is insufficiently pled under section Title 20 United States Code 1415(c)(2)(D).
2. Student shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).<sup>8</sup>
3. 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.
4. If Student fails to file a timely amended complaint, the complaint will be dismissed.

---

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

5. All dates previously set in this matter are vacated.

Dated: July 9, 2012

/s/

---

DARRELL LEPKOWSKY  
Administrative Law Judge  
Office of Administrative Hearings