

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

PASO ROBLES JOINT UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2012090342

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On September 12, 2012, Student filed a Due Process Hearing Request¹ (complaint) with the Office of Administrative Hearings, naming the Paso Robles Joint Unified School District (District). On September 19, 2012, the 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) and Education Code section 56502, subdivision (c)(1).

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 named parties with

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); Ed. Code 56502, subd. § (d)(1).

³ 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

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 Individuals with Disabilities Education 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

DISCUSSION

Student’s complaint contains four issues for hearing regarding the District’s alleged failure to implement provisions of Student’s individualized education program (IEP) then in effect. As to Issues 1, 2 and 3, Student’s complaint contains an adequate narrative regarding the IEP at issue, the provision of the IEP that the District purportedly failed to implement and how the District failed to implement that provision. The complaint provides the District with adequate notice as to the particular IEP’s at issue and the provision the District allegedly failed to implement. Accordingly, Student alleges sufficient facts supporting these claims in Issues 1, 2 and 3 to put the District on notice, and therefore these claims are sufficient.

However, as to Issue 4, the complaint contains insufficient allegations because the complaint is confusing which IEP or IEP’s the District failed to implement, the January 26, 2012, June 8, 2012 or August 12, 2012 IEP. This confusion requires the District to guess as to whether it failed to implement one, two or all three of the listed IEP’s. Accordingly, Student alleges insufficient facts supporting the claims in Issue 4 to put the District on notice, and therefore this claim is insufficient.

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).

Student's proposed resolution is that the District provide behavioral services, specialized academic instruction and a one-to-one aide, and to reimburse Parents for educational expenses. 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 resolution stated in Student's complaint is well-defined and meets the statutorily required standard of stating a resolution to the extent known and available to Student at the time.

ORDER

1. Issues 1, 2, and 3 of Student's complaint are sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. Issue 4 of Student's complaint is 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
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 1, 2, and 3 of Student's complaint.

Dated: September 20, 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.