

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS on behalf of STUDENT,

v.

MENLO PARK CITY ELEMENTARY
SCHOOL DISTRICT.

OAH CASE NO. 2010020281

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On February 9, 2010 Parent, on behalf of Student, filed a Due Process Hearing Request (complaint) against the Menlo Park City Elementary School District (District).¹ On February 18, 2010, attorney John D. Nibbelin, on behalf of 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 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 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 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 alleges four claims, which are all insufficiently pled. Student alleges the District purportedly denied him a FAPE by refusing to provide Student with required transportation, predetermining his placement, not implementing his existing individual education program (IEP) and refusing to schedule an IEP meeting for him.

Regarding the first issue, Student’s complaint does not contain sufficient factual allegations to provide the required notice to the District because the complaint does not set forth factual allegations as to why the District needed to provide Student with transportation services for Student to receive a FAPE.⁸

Regarding the second and third issues for hearing, Student’s complaint does not contain sufficient factual allegations to provide the required notice to the District because the complaint does not identify the IEP at issue, and why the District’s proposed educational program did not provide Student with a FAPE.

Regarding the fourth issue for hearing, Student’s complaint does not contain sufficient factual allegations to provide the required notice to the District because the complaint does not contain allegations stating when Parents requested any IEP meeting.

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).

⁸ Student implies in the proposed resolution that the District needs to provide Student with transportation pursuant to the plan under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.). However, OAH does not have jurisdiction to hear claims under Section 504. (Ed. Code, § 56501, subd. (a).)

As discussed above, a responding party is entitled to know the basis of each claim and the nature of the specific allegations being made against it with respect to each issue or problem, so that the responding party may be able to prepare a response, prepare for a resolution session, or prepare a defense for hearing. Therefore, Student failed to state sufficient facts supporting the issues for hearing.

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 Parents request the assistance of a mediator, they should contact OAH immediately in writing.

ORDER

1. Student's complaint is insufficiently pled under section 1415(c)(2)(D).
2. Student shall be permitted to file an amended complaint under section 1415(c)(2)(E)(i)(II).⁹
3. The amended complaint shall comply with the requirements of 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.
5. All dates previously set in this matter are vacated.

Dated: February 23, 2010

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings

⁹ The filing of an amended complaint will restart the applicable timelines for a due process hearing.