

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

RIPON UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2010080006

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On July 30, 2010, attorney Tamara L. Loughrey, on behalf of Student, filed a Due Process Hearing Request¹ (complaint) against Ripon Unified School District (District). On August 13, 2010, attorney Marcella L. Gutierrez, on behalf of the District, filed a Notice of Insufficiency (NOI) as to Student's complaint.²

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.³ 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.⁴ These requirements prevent vague and confusing complaints, and promote fairness by providing the

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 The District also contends that the Office of Administrative Hearings does not have jurisdiction to hear Issues No. 3 and No. 4 in Student's complaint because Student's claims are barred by the parties' Settlement Agreement. The District's contentions are not appropriate for a NOI, which just looks at the face of the complaint to determine its sufficiency. The District's contentions should be made through a Motion to Dismiss.

³ 20 U.S.C. § 1415(b) & (c).

⁴ 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.⁵

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁶ 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.⁷ Whether the complaint is sufficient is a matter within the sound discretion of the ALJ.⁸

DISCUSSION

Student’s complaint raises four issues for determination. The District does not assert that Student alleged insufficient facts in Issues No. 1 and No. 2. Issue No. 3 in Student’s complaint asserts that the District denied Student a FAPE during the 2009 Extended School Year and 2009-2010 school year (SY) because the District failed to offer Student appropriate supports and services to address his speech and language, occupational therapy, academic and assistive technology needs. Student provides a sufficient factual basis regarding his deficits, the District’s offer and why the District’s offer failed to address his unique needs. Accordingly, Issue No. 3 is legally sufficient.

Issue No. 4 in Student’s complaint contends that the District denied Student a FAPE during SY 2009-2010 because it failed to provide him an aide to protect him from bullying and harassment from other students. The complaint contains sufficient factual allegations regarding the bullying and harassment by other students that prevented Student from attending school. A school district has the obligation to consider a pupil’s safety related to his or her qualifying disability in creating and implementing the educational program. (*Lillbask v. Connecticut Dept. of Education* (2d Cir. 2005) 397 F.3d. 77, 93.) Accordingly, Issue No. 4 is legally sufficient.

The facts alleged in Student’s complaint are sufficient to put the District on notice of the issues forming the basis of the complaint. Student’s complaint identifies the issues and

⁵ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁶ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁷ *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.].

⁸ 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).

adequate related facts about the problems to permit the District to respond to the complaint and participate in a resolution session and mediation. The complaint identifies resolutions known to Student at the time. Accordingly, Student's complaint is sufficient.

ORDER

1. The complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: August 18, 2010

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings