

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PASO ROBLES PUBLIC SCHOOLS,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2010090190

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT AND DENYING
MOTION TO DISMISS COMPLAINT

On September 2, 2010, Jessi Carriger, attorney for the Paso Robles Joint Unified School District (District) filed a Due Process Hearing Request¹ (complaint) naming (Student).

On September 8, 2010, Brad Bailey, advocate for Student, filed a Notice of Insufficiency (NOI) as to District's complaint. Student further requests that if the complaint is found sufficient that it be dismissed because District did not notify Student's biological father or Student's advocate.

APPLICABLE LAW

The serving of notice of a complaint is a simple process. Either party, or the attorney representing a party, must provide to the other party a due process complaint.²

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 section 1415(b)(7)(A).

The complaint is deemed sufficient unless a party notifies the Office of Administrative Hearings and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements.⁴

¹ Two complaints were filed on this day, the first did not list Student's date of birth or home address; the second, with the missing information, was filed later in the afternoon on the same day.

² 20 U.S.C. § 1415(b)(7)(A) and (C)(2); Ed. Code, § 56501, subd. (D)(1).

³ 20 U.S.C. § 1415(b) & (c). All citations are to title 20 United States Code unless noted otherwise.

⁴ 20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(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.⁵ A complaint shall include the name of the child, the address of the residence of the child, and the name of the school the child is attending.⁶ 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.⁷

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁸ 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.⁹ Whether the complaint is sufficient is a matter within the sound discretion of the ALJ.¹⁰

DISCUSSION

Notice of Insufficiency

The District sufficiently provides identifying information in its complaint; it identifies Student, his address of residence and the name of the school that Student is attending. The District presents two issues.

First issue: District’s comprehensive psychoeducation evaluation was appropriate. Here, District provided information in its complaint of the history of Student, detailed

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

⁶ 20 U.S.C. § 1415(b)(7)(A)(ii)(I); Ed. Code, § 56502, subd. (C)(1)(A).

⁷ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁸ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁹ *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.].

¹⁰ 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).

description of each assessment tool used in its assessment of Student and the names of the District personnel who conducted the assessment. Furthermore, the complaint provides information regarding the outcome of the assessments and the recommendation of the assessor who provided information to the independent educational program (IEP) team.

Second issue: Student is not eligible for special education. The information provided in the complaint related to the first issue is also relevant to the second issue. Additionally, District identifies the psychologist who formed the opinion that student was not eligible for special education and provided detail of the information that was collected to form the basis of that opinion as well as information related to Student's performance.

The facts alleged in District's complaint are sufficient to put the Student on notice of the issues forming the basis of the complaint. District's complaint identifies the issues and adequate related facts about the problem to permit Student to respond to the complaint and participate in mediation. Furthermore, the District provides a proposed resolution for the problem requesting an order from OAH that the assessment was sufficient and that Student is ineligible for special education. Therefore, District's complaint is sufficient.

Motion to Dismiss Complaint

Student did not cite any legal authority requiring service to the biological father and the facts alleged do not compel requiring that father be served. Regarding Student's claim that Student's advocate be served, there is no legal requirement that the complaint be served on Student's advocate until notice of representation has been provided. It is established that the mother of Student did receive appropriate notice of the complaint, which met the requirements of the law. Therefore, Student's motion to dismiss is denied.

ORDER

1. The complaint is sufficient under section 1415(b)(7)(A)(ii).
2. Student's motion to dismiss is denied.
2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: September 9, 2010

/s/

MICHAEL G. BARTH
Administrative Law Judge
Office of Administrative Hearings