

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MT. DIABLO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011020458

ORDER OF DETERMINATION OF
SUFFICIENCY OF AMENDED DUE
PROCESS COMPLAINT

On February 11, 2011, Student, through his parent (Student), filed a Due Process Hearing Request¹ (complaint) naming the Mt. Diablo Unified School District (District).

On February 28, 2011, the District filed a Notice of Insufficiency (NOI) as to Student's complaint. On February 28, 2011, the Office of Administrative Hearings (OAH) issued an order finding the complaint "insufficiently pled because it fails to provide the District with the required notice of a description of the problem and the facts relating to the problem making it difficult for the District to defend against it." Additionally, OAH did find that the proposed resolutions contained in the complaint were sufficient.

On March 15, 2011, Student filed an amended Due Process Hearing Request (amended complaint). The amended complaint contains ten issues.² On March 24, 2011, the District filed a response to the amended complaint. On March 25, 2011, the District filed a Notice of Insufficiency regarding the amended complaint.

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

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 issues are numbered one through eight with three issues designated using the number three.

³ 20 U.S.C. § 1415(b) & (c).

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 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 Individuals with Disabilities Education Act 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 Administrative Law Judge.⁸

DISCUSSION

In the amended complaint, Student attempts to allege ten separate issues. The District was able to respond to six of the issues in its Response. The District did not respond to Issues Two, Seven, Eight, and Ten.

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

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).

Student's amended complaint contains the following issues (the numbers correspond with the issues in order that they are alleged):

(1) Since February 2010, Student's teacher, Mrs. Brudney, has not fully implemented Student's IEP because she is not permitting Student to receive Assistive Technology services;

(2) Mrs. Brudney denied Student's parents (Parents) request for a triennial IEP meeting in October 2009 and the District failed to hold the triennial IEP meeting;

(3) Mrs. Brudney interfered with Student receiving "workability" services;

(4) In February 2011, Student was terminated from the workability program and the District failed to conduct an IEP team meeting to discuss the termination or alternative programs;

(5) Mrs. Brudney has failed to implement the IEP by failing to follow a daily schedule called for in the IEP and by failing to implement the behavior support plan;

(6) On February 17, 2011, Student was involved in an incident at school involving Student's request for popcorn;

(7) Mrs. Brudney failed to implement the crisis management plan of the IEP for the February 17, 2011, incident;

(8) This involves a suspension resulting from the February 17, 2011 incident;

(9) Student alleges that the District has failed to appropriately implement Student's one-to-one aide services when the regularly assigned aide is absent;

(10) Student alleges that Parents are being restricted from communicating with school staff.

Issues One, Three, Four, Five, and Nine were clear enough to permit the District to file a response to Student's complaint. These issues are specific enough to put the District on notice as to what is being alleged. Thus, Issues One, Three, Four, Five, and Nine are sufficient.

Issue Two clearly states that the District committed a procedural violation of the IDEA when it did not hold a triennial IEP meeting timely and after a request by Parents. It contains a description of the problem and the facts in support of the allegation. Issue Two is sufficient.

Issues Six, Seven and Eight refer to a February 17, 2011 incident and its aftermath. In Issue Six, Student alleges that the District failed to properly adhere to the crisis

management plan. Student's allegations in Issues Seven and Eight are unclear. Thus, Issues Seven and Eight are not sufficient as pled. It is imperative that Student state in what way that he was denied a free appropriate public education and what resolution he seeks.

In Issue Ten, Student fails to set forth in what manner he is being denied a free appropriate public education. Student admits that the reason for the District placing a restriction on parental contact with school staff is because parent engaged in "disruptive behavior." It appears that this allegation falls outside the purview of the IDEA and OAH lacks jurisdiction as to this issue.

A complaint is also 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 District contends that Student's resolutions 7, 8, and 9 are outside of the jurisdiction of OAH and should be found insufficient. However, the resolutions meet the statutory requirement for sufficiency because they are well-defined and put the District on notice of what Student is seeking as a remedy to his alleged FAPE violations. To the extent that the District contends that these proposed resolutions are outside of the jurisdiction of OAH, a NOI is not the proper forum for making such a determination.

MEDIATOR ASSISTANCE FOR NON-REPRESENTED PARENTS

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.⁹ Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request. Student's parent may either write OAH and request mediator assistance or call OAH at (916) 263-0880 and ask for further instructions on how to obtain this type of assistance.

ORDER

1. Student's amended complaint is sufficiently pled as to Issues One, Two, Three, Four, Five, Six, and Nine. The amended complaint is insufficiently pled as to Issues Seven, Eight, and Ten under section title 20 United States Code 1415(c)(2)(D).

2. Student shall be permitted to file a second amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).¹⁰

9 Ed. Code, § 56505.

¹⁰ The filing of an amended complaint will restart the applicable timelines for a due process hearing.

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 second amended complaint, Issues Seven, Eight, and Ten will be dismissed.

5. If Student's parent wishes assistance in writing an amended complaint, she should write to OAH to request such assistance or contact OAH at the phone number indicated above.

Dated: March 29, 2011

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings