

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

PASADENA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011050806

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT AND ORDER DENYING
REQUEST FOR DELAYED FILING OF
REPLY

On May 17, 2011, Parents on behalf of Student (Student) filed a Due Process Hearing Complaint¹ (complaint) naming the Pasadena Unified School District (District).

On June 1, 2011, District timely filed a Notice of Insufficiency (NOI) as to Student's complaint. On June 3, 2010, the parties filed a stipulated request to grant Student a brief "continuance" in order to file a response to the NOI. For the reasons set forth below, the request to file a delayed reply to District's NOI is denied, and the NOI is ruled on.

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).

The complaint is deemed sufficient unless a party notifies the Office of Administrative Hearings (OAH) 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.³

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(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).

OAH is required to rule within five days of receipt of the NOI, based on the face of the complaint. (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.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 Improvement Act (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 Administrative Law Judge.⁸

DISCUSSION

Student’s complaint alleges four general areas of problems about the 2010-2011 school year, the 2011 extended school year (ESY), and the 2011-2012 school year. The problems are detailed for the 2010-2011 school year, and then merely incorporated as the same problems for the ESY, and the next school year.

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).

In connection with the first problem, based on failure to adequately assess Student, the complaint states, first, that Parents agreed to waive time lines for a triennial assessment; then, the complaint says Parents did not agree to waive the timelines. This problem is contradictory and too vague. District is entitled to clear notice of this problem.

For the 2010-2011 school year, Student's complaint, in the second and third problems, claims generally that the programs District offered in several individualized education programs (IEPs) failed to address all areas of suspected disability; and that the annual goals, and the type and frequency of the educational supports, services and accommodations were insufficient to meet Student's auditory, functional, visual, language, and academic needs. In addition, Student claimed that District predetermined the offers. These problems simply refer to pages of factual allegations. On the face of the complaint, Student has not identified what goals, supports, services or accommodations were inadequate and why. The same holds true as the problems are restated for the 2011 ESY, and the 2011-2012 school year.

Student's fourth problem contends that District failed to have an IEP in place at the beginning of the 2010-2011 school year as required by law. This problem is clearly stated.

In connection with Student's factual allegations and proposed resolutions, particularly reimbursement for private services, District contends that Student's complaint omits critical dates, including when Parents claim they provided notice of unilateral enrollment at Robbin's Nest, when Student began attending there, and when Parents modified the acoustics at that school. Since three out of the four problems for each school year are insufficient, Student will have an opportunity to amend his complaint and provide additional information.

ORDER

1. Student's fourth problem in his complaint, for the 2010-2011 school year only, is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. Student's first, second, and third problems in his complaint, for each school year and ESY, are 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).⁹

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

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 20 days from the date of this order.¹⁰

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Student's fourth problem in his complaint, for each school year and ESY.

Dated: June 7, 2011

/s/

DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

¹⁰ In view of Student's request for more time due to recent negotiations, Student's time to file an amended complaint is extended from 14 days to 20 days.