

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CASTRO VALLEY UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011080461

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On August 12, 2011, Parent on behalf of Student (Student) filed a Due Process Hearing Request¹ (complaint) naming Castro Valley Unified District (District) as respondent. On August 26, 2011, District filed a Notice of Insufficiency (NOI) as to Student's complaint, asserting that Student's complaint failed to allege sufficient facts and law to support the allegations.

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).

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

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).

participate in resolution sessions and mediation.⁴ 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 IDEA 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 alleges six issues in the complaint, some of which are sufficient and some which are insufficient. The issues are discussed below.

With regard to Issue one, Student fails to allege what time period or IEP is at issue. The introductory paragraphs of the complaint span several years and do not clearly delineate the applicable time period. Accordingly, issue one is not sufficiently pled to put District on notice of the problem.

With regard to Issue two, Student’s complaint is adequately pled to the extent it asserts that District denied Student a FAPE for the two years prior to the filing of the complaint by failing to conduct adequate and appropriate assessment in the areas of FAA, FBA and APE.

With regard to Issue three, Student’s complaint is adequately pled to the extent that it asserts that District denied Student a FAPE by not making provisions in his current IEP for placement when Student is unable to attend school due to a broken ankle or unspecified emotional problems.

⁴ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

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).

With regard to Issue 4, Student's complaint is adequately pled to the extent that he asserts that District failed to provide Student with a transition plan during the two years prior to the filing of the complaint.

With regard to Issue 5, Student's complaint pleads that he is entitled to compensatory education as a remedy for the deprivation of FAPE alleged in the complaint. Compensatory education is a remedy and not an issue. To the extent Student seeks compensatory education, such relief is subject to proof at hearing.

With regard to Issue 6, Student fails to adequately identify the problem. Student fails to identify the records requested, the records not produced and how the alleged failure to provide records deprived Student of an educational benefit or parents of an opportunity to participate in the IEP process.

A complaint is 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).) Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

ORDER

1. Issues two, three and four are sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii) as outlined above.
2. Issues one, five and six of the complaint 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).⁸
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 14 days from the date of this order.
5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues two, three and four of the Complaint.

Dated: September 6, 2011

/s/

GLYNDA B. GOMEZ
Administrative Law Judge
Office of Administrative Hearings

⁸ The filing of an amended complaint will restart the applicable timelines for a due process hearing.

