

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

DRY CREEK JOINT ELEMENTARY
SCHOOL DISTRICT.

v.

PARENT ON BEHALF OF STUDENT

OAH CASE NO. 2011090491

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On September 12, 2011, Jessi Carriger, Attorney on behalf of the Dry Creek Joint Elementary School District (District) filed a Due Process Hearing Request¹ (complaint) naming Student.

On September 27, 2011, Student filed a Notice of Insufficiency (NOI) as to District's complaint.

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

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).

named parties with sufficient information to know how to prepare for the hearing and how to 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 Individuals with Disabilities Education Act 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

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. District presents two issues in its complaint:

Issue No. 1: Did District develop an offer of a free FAPE appropriate to meet Student’s needs for the 2011-2012 school year?

Student argues that District did not make an offer of FAPE to Parents for the 2011-2012 school year; but District details the highlights of its offer in the complaint. Student’s arguments related to whether District actually delivered the individualized education program (IEP) or completed the IEP process may be presented as an affirmative defense, but do not detract from the sufficiency of District’s complaint. The issue presented provides sufficient information for Student to know how to prepare for the hearing and how to participate in a resolution session and mediation

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).

Issue No. 2: May District conduct the proposed reading, academic and assisted technology assessments?

Student argues that District fails to present any times when Parents requested assessments. These facts are not needed for District's complaint to be sufficient. District alleges that Parents have refused consent for these assessments, which District alleges are necessary to offer FAPE to Student. The issue presented provides sufficient information for Student to know how to prepare for the hearing and how to participate in a resolution session and mediation. Therefore, District's presentation of Issues No. 1 and No. 2 are sufficient.

District's proposed resolutions request a finding that District offered Student a FAPE appropriate to meet his needs for the 2010-2011 school year and a finding that District may conduct reading, academic and assisted technology assessments to assure that assessments are conducted in all areas related to Student's disability. 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).) District has met the statutorily required standard of stating a resolution to the extent known and available to it at the time.

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: September 28, 2011

/s/

MICHAEL G. BARTH
Administrative Law Judge
Office of Administrative Hearings