

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CLOVIS UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2012110503

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On November 14, 2012 Student filed a Due Process Hearing Request¹ (complaint) naming the Clovis Unified School District (District). On November 29, 2012, the District timely filed a Notice of Insufficiency (NOI) as to Student'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 Student’s complaint are sufficient to put the District on notice of the issues forming the basis of the complaint. Student’s complaint identifies the issues and adequate related facts about the problem to permit the District to respond to the complaint and participate in a resolution session and mediation.

Student is a 13-year-old boy with Down’s Syndrome who is currently in the seventh grade and eligible for special education services under the primary category of intellectual disability. Student’s complaint identifies a secondary classification of speech and language impairment. Student alleges four primary issues with several sub-issues, many of which are duplicative. In summary, Student contends that the District, in focusing on a functional living skills program, has failed to provide him an appropriate academic program or the necessary supports and related services such as a modified curriculum, speech and language services, and appropriately trained and supervised teachers and paraprofessional to allow him to access and be included in the general education curriculum.

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).

In reviewing the complaint in its entirety, Student has provided sufficient related facts in support of his contention that the District failed to provide him a FAPE for the 2012-2013 school year in the least restrictive environment (LRE). Student provides the nature of his disability, the time frame in issue, the specific dates of the individualized education programs (IEP's) in question, and sufficient support for his allegations.

Student's first issue alleges the District's IEP offer for the 2012-2013 school year denied Student a FAPE in that it failed to provide Student with goals consistent with this ability; proposed a curriculum with limited academic instruction and no instruction in age-appropriate subject matter; failed to provide Student access to the general education curriculum, including failing to provide appropriate supports and services to meet Student's specific learning needs; and failed to provide for placement in the LRE. Student's second issue alleges the District's implementation of the 2012-2013 IEP continues to deny Student a FAPE by failing to implement goals and objectives that meet Student's unique learning needs, and by failing to provide necessary supports and services to allow Student to access the general education curriculum, including speech and language therapy, adequately trained paraprofessionals and a modified curriculum designed to meet Student's specific learning style. Student's third issue alleges the District failed to educate Student in the LRE during the 2012-2013 school year by failing to provide appropriate supports and services to allow Student to access the general education curriculum and failing to adequately train and supervise its paraprofessionals to provide the supports and services Student requires. Student's fourth issue alleges the District failed to implement Student's IEP for the 2012-2013 school year and ensure that Student attended the regular education class for 57 percent of his school day.

In reading the complaint in its entirety, and liberally construing it in light of the broad remedial purposes of the IDEA and the relative informality of the due process hearing, Student's four issues, while at times redundant, are sufficiently pled to put the District on notice as to the basis of Student's claims. To the extent further details will assist in clarifying issues for hearing, these can be provided at the prehearing conference and are a matter for proof at hearing and are not necessary to provide the District with an awareness and understanding of the issues forming the basis of Student's complaint. Student's complaint as a whole, is sufficiently pled such that the District may meaningfully respond, participate in a resolution session and mediation, and prepare for hearing. Therefore, Student's statement of all four claims is sufficient.

Student's proposed resolutions request an order that the District has denied Student a FAPE in the LRE; that the District provide Student with additional speech and language services; and that the District convene an IEP team meeting to draft an IEP with supports and services Student requires to receive his educational program in the general education classroom at Alta Sierra Middle School. Student requests that the District provide him with an inclusion program including curriculum modifications to the grade-appropriate general education academic subjects to meet Student's unique needs, teachers and paraprofessionals appropriately trained and supervised to provide special education and related services and who are trained in positive behavior approaches, inclusive practices, human sexuality and

persons with disabilities and appropriate boundaries between student and professional. Student proposes that the District implement a buddy system to help Student adjust and to facilitate friendships and to keep Student from becoming an easy target for bullying, sexual abuse or drugs; that the District ensure that all staff who interact with Student are aware of his goals and objectives and can assist Student to become more independent and able to interact with his peers; and that the District hire an inclusion specialist to assist general education teachers and aides to implement a scientifically-based inclusive educational program for Student. Finally, Student proposes as a resolution that the District reimburse Parents the costs of providing Student educational services during the 2012-2013 school year; that the District reimburse Parents the costs of counseling services for Student; and that the District provide compensatory education.

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. 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: November 30, 2012

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings