

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

ELK GROVE UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2014040776

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On June 6, 2014, Student filed an amended Due Process Hearing Request¹ (amended complaint) with the Office of Administrative Hearings naming the Elk Grove Unified School District. On June 23, 2014, District filed a Notice of Insufficiency (NOI) as to Student's amended complaint.²

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 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

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 District's motion to dismiss will be ruled upon in a separate order. District's NOI is untimely in addition to Student's amended complaint being sufficient in any event.

³ 20 U.S.C. § 1415(b) & (c).

⁴ 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.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

Student’s amended complaint contains three issues for hearing, with several sub-issues in each issue, which all involve District’s alleged failure to provide Student with adequate services to meet his unique needs, failure to assess Student in all areas of suspected disabilities, and failing to convene an individualized education program team meetings. Student alleges sufficient facts as to each issue and sub-issue therein with factual contentions regarding District’s purported failure to assess and failure to provide special education services, especially due to the District’s failure to convene IEP team meetings. Therefore, Student alleged sufficient facts to put District on notice as to all issues and sub-issues for hearing.

Student’s proposed resolution is that District assess Student in specified areas of suspected disabilities, develop an appropriate IEP after the assessments and 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).) The proposed resolutions stated in Student’s amended complaint

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).

are well-defined requests that meet the statutorily required standard of stating a resolution to the extent known and available to Student at the time.

ORDER

1. The amended 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.

DATE: June 25, 2014

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings