

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SANTA CLARA COUNTY OFFICE OF
EDUCATION.

OAH CASE NO. 2013010169

CORRECTED ORDER OF
DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT¹

On January 8, 2013, Student filed a Due Process Hearing Request² (complaint) with the Office of Administrative Hearings (OAH), naming the Santa Clara County Office of Education (SCCOE). On January 17, 2013, SCCOE filed a Notice of Insufficiency (NOI) as to Student's complaint.³

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.⁴ The complaint is deemed sufficient unless a party notifies the Office of Administrative Hearings 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.⁵ 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) and Education Code section 56502, subdivision (c)(1).

¹ This order corrects the January 22, 2013 Order of Determination of Sufficiency of Due Process Complaint to add to order that Issue 2 is insufficiently plead as stated in the Discussion. All time frames in the January 22, 2013 order are still applicable.

² 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).

³ SCCOE concurrently filed a motion to dismiss that will be addressed in another order.

⁴ 20 U.S.C. § 1415(b) & (c); Ed. Code 56502, subd. § (d)(1).

⁵ 20 U.S.C. § 1415(c)(2)(C); 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.⁶ 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.⁷

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁸ 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.⁹ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.¹⁰

DISCUSSION

Student’s complaint contains four issues for hearing regarding SCCOE’s alleged failure to adequately assess his unique needs, failing to provide adequate educational goals and services, and not producing requested educational records. As to Issues 1 and 3, Student’s complaint contains an adequate narrative regarding his educational struggles and needs, and SCCOE’s purported failure to provide occupational therapy (OT) and assistive technology (AT) assessments. However, the complaint does not allege sufficient facts that SCCOE needed to assess Student’s behavior, health, and academic needs. Accordingly,

⁶ 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

⁷ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁸ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁹ *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.].

¹⁰ 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).

Student alleges sufficient facts in Issue 1 to support claims regarding OT and AT assessments to put SCCOE on notice, and therefore these claims are sufficient. However Student does not allege sufficient facts in Issue 1 as to behavior, health, and academic assessments and Issue 3.

As to Issue 2, the complaint does not contain sufficient allegations that SCCOE failed to provide him with adequate goals and services to meet his unique needs. Student's complaint fails to adequately allege the areas of need that SCCOE goals failed to address and the services required. Accordingly, Student fails to allege sufficient facts supporting this issue to put SCCOE on notice, and therefore this claim is insufficient.

As to Issue 4, the complaint contains sufficient allegations that SCCOE failed to produce to Parent a complete copy of Student's educational records and that this significantly impeded Parent's ability to participate in Student's educational decision making process. Accordingly, Student alleges sufficient facts supporting these claims to put SCCOE on notice, and therefore this claim is sufficient.

Therefore, Issue 1 as to the OT and AT assessment and Issue 4 are sufficiently pled to put SCCOE on notice as to the basis of Student's claims. However, Issue 1 as to behavior, health, and academic assessments and Issues 2 and 3 are not sufficiently pled.

Student's proposed resolution is that SCCOE fund independent educational evaluations (IEE's) for OT and AT is related to the remaining portion of Issue 1, and production of education records in Issue 4. However, Student's other IEE requests are not related to any issues left remaining in the complaint, along with the request for a private placement, new goals and 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 resolution stated in Student's complaint as to SCCOE funding OT and AT IEE's and production of education records are the only 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. Issue 1 as to the OT and AT assessments and Issue 4 of Student's complaint are sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).

2. Issue 1 as to behavior, health, and academic assessments and Issues 2 and 3 of Student's 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).¹¹

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 Issue 1 as to the OT and AT assessments and Issue 4 in Student's complaint.

Dated: January 28, 2013

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings

¹¹ The filing of an amended complaint will restart the applicable timelines for a due process hearing.