

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

RIALTO UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2013010821

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On January 25, 2013, Student filed a Due Process Hearing Request¹ (complaint) with the Office of Administrative Hearings (OAH), naming the Rialto Unified School District (District). On February 5, 2013, the District filed a Notice of Insufficiency (NOI) as to Student's 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 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.⁴ 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).

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

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 The District concurrently filed a motion to dismiss that will be addressed in another order.

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

⁴ 20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).

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.⁵ 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.⁶

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁷ 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.⁸ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁹

DISCUSSION

Student’s complaint contains 14 issues, and several sub-issues, for hearing regarding the District’s alleged failure to adequately assess his unique needs, failing to provide adequate goals and services to meet Student’s numerous unique needs, and various procedural violations. As to Issue 1, Student’s complaint contains a stream of consciousness factual narrative regarding his educational struggles and needs, and the District’s purported failure to meet his behavioral needs. The lengthy, rambling narrative requires the District to guess which facts relate to Issue 1. (*Student v. Valley Center Union School District* (2009) Cal.Ofc.Admin.Hrngs. Case No. 2009010785.) Accordingly, Student does not allege sufficient facts in Issue 1 to support claims regarding behavioral issues to put the District on notice, and therefore this claim is insufficient.

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

⁶ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁷ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁸ *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.].

⁹ 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).

As to Issue 2, the complaint contains sufficient and succinct allegations that the District failed to meet Student's oral language needs and the consequence of the District's purported violations. Accordingly, Student alleges sufficient facts supporting these claims to put the District on notice, and therefore Issue 2 is sufficient.

As to Issues 3a and 12, the complaint does not contain sufficient allegations that the District failed to meet his reading needs in Issue 3 and purported procedural violation in Issue 12 as the allegations in these issue are more a diatribe against the District through the use of such phrases as "pie in the sky" and demeaning language towards the school psychologist, teacher and District's counsel. Accordingly, Student fails to allege sufficient facts supporting Issues 3a and 12 to put the District on notice, and therefore these claims are insufficient.¹⁰

As to Issues 3b, 3c, 3d, 3e, 3f, 3g, 4 through 11, 13 and 14, Student pleads sufficient, succinct facts as to Student's unique needs, such as math, written language and social studies, purported procedural violations and Student's need for extended school year services. Accordingly, Student alleges sufficient facts supporting these claims to put the District on notice, and therefore Issues 3b, 3c, 3d, 3e, 3f, 3g, 4 through 11, 13 and 14 are sufficient.

Therefore, Issues 2, 3b, 3c, 3d, 3e, 3f, 3g, 4 through 11, 13 and 14 are sufficiently pled to put the District on notice as to the basis of Student's claims. However, Issues 1 and 3a are not sufficiently pled.

Student's proposed resolution is that the District provide specified compensatory education, additional speech and language and behavioral services, an independent educational evaluation and parental reimbursement. 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 complaint 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. Issues 2, 3b, 3c, 3d, 3e, 3f, 3g, 4 through 11, 13 and 14 of Student's complaint are sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).

2. Issues 1 and 3a of Student's complaint are insufficiently pled under title 20 United States Code section 1415(c)(2)(D).

¹⁰ Student's counsel is advised to stick to the facts in her pleading and avoid unnecessary personal commentary that is designed more to inflame and grandstand than to impart any basic knowledge about Student, his needs and the District's alleged violations.

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 Issues 2, 3b, 3c, 3d, 3e, 3f, 3g, 4 through 11, 13 and 14 in Student's complaint.

Dated: February 12, 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.