

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CUPERTINO UNION SCHOOL
DISTRICT.

OAH CASE NO. 2014040298

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On April 04, 2014, Parent on behalf of Student (Student) filed a Due Process Hearing Request¹ (complaint) naming the Cupertino Union School District (Cupertino).

On April 15, 2014, Cupertino 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 IDEA 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 Cupertino 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 Cupertino to respond to the complaint and participate in a resolution session and mediation.

Student’s complaint sufficiently pleads 11 claims. For the 2012-2013 school year, Student sufficiently alleged that Cupertino denied him a free appropriate public education (FAPE) by: (1) failing to provide a properly credentialed special day class teacher; and (2) failing to deliver supports, accommodations and services pursuant to an April 2013 individualized education program (IEP).

For the 2013-2014 school year, Student sufficiently alleged that Cupertino denied him a FAPE by: (1) failing to offer Student an adequate level of mainstreaming; (2) failing to offer a means to track his academic performance during mainstreaming, thereby seriously infringing upon his parent’s ability to meaningfully participate in the development of his IEP; (3) failing to implement a behavior plan and behavior support services; (4) failing to

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).

have a special day class teacher and a general education teacher in attendance at his September 2013 IEP; (5) by offering transportation to school which was inappropriate, given Student's attention deficit hyperactivity disorder; (6) by failing to provide an instructional assistant during his mainstreaming opportunities, (7) failing to provide a properly credentialed special day class teacher; and (8) failing to deliver supports, accommodations and services pursuant to an April 2013 IEP, which was operative during part of the 2013-2014 school year.

Finally, Student has alleged that Cupertino denied him a FAPE for the 2014-2015 school year by failing to offer a special day class at Steven's Creek Elementary School, pursuant to an IEP meeting held in April 2014.

Additionally, Student's proposed resolutions clearly state a concrete remedy that would address at least one of the foregoing allegations. Student primarily requests that he be transferred to an educational placement at Steven's Creek Elementary School, with appropriate transportation to-and-from the school placement. As a result, Student's proposed resolutions provide Cupertino sufficient information to know how to prepare for the hearing and how to participate in the resolution session and mediation.

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.

DATE: April 18, 2014

/s/

PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings