

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN MATEO-FOSTER CITY SCHOOL
DISTRICT.

OAH CASE NO. 2014040853

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On April 16, 2014, Student, through his legal counsel, filed a Due Process Hearing Request¹ (complaint) with the Office of Administrative Hearings (OAH) naming the San Mateo-Foster City School District (District).² On May 2, 2014, 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.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

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 complaint indicates that Student's legal counsel signed the document on April 8, 2014. However, the complaint was not served to and received by OAH until April 16, 2014. The complaint was served by mail on District, which received it on April 18, 2014.

³ 20 U.S.C. § 1415(b) & (c).

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 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 complaint contains four issues for hearing,⁹ which allege that District failed to adequately assess him and develop an educational program that met his unique needs. In Issue One, Student alleges that District failed to assess him in all areas of suspected disability. While the factual allegations do not set forth the areas of suspected disability, the proposed resolutions set forth the areas that the District needed to assess, which are

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

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).

⁹ Student’s fifth issue is in fact a proposed resolution requesting compensatory education.

psychoeducational, mental health, speech and language and behavior.¹⁰ Therefore, Student alleged sufficient facts to put District on notice as to this issue for hearing.

District challenges Issue Two since Student requests a functional analysis assessment and the development of a behavior intervention plan, as the underlying regulatory scheme was repealed. However, District's request is not appropriate for an NOI and needs to be addressed in a separate motion to dismiss.¹¹

Regarding Issue Three, District asserts that Student did not allege which goals and services he required to receive a FAPE during the 2013-2014 school year. However, as with Issue One, Student limited the areas in the proposed resolutions to mental health, speech and language and behavior. Additionally, the complaint alleges sufficient facts regarding his need for a one-to-one aide. Therefore, Student alleged sufficient facts to put District on notice as to this issue for hearing.

Finally for Issue Four, the complaint contains adequate factual allegations that District violated Parents' procedural rights by failing to consider parental information and not providing prior written notice for failing to assess Student and not providing him with a one-to-one aide.

Student's proposed resolutions are that District provide compensatory education services and assess Student and develop an appropriate educational program. 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. The complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).

¹⁰ If Student wants to allege other areas of suspected disability, Student will need to make a motion to amend his complaint pursuant to title 20 United States Code section 1415(c)(2)(E)(i)(II), which will restart the applicable timelines for a due process hearing.

¹¹ California law required a school district to conduct a functional analysis assessment when a student was found to have caused a serious injury as the result of his disability, or required a behavior intervention plan. (Former Ed. Code, §§ 56520- 56525 (repealed Stats. 2013, ch.48, eff. July 1, 2013) These sections were repealed effective July 1, 2013. (Ed. Code, §§ 56521.1, 56521.2 and 56523, subd. (a).)

2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

DATE: May 6, 2014

/s/

PETER PAUL CASTILLO

Administrative Law Judge

Office of Administrative Hearings