

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

UPLAND UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2014070454

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On July 07, 2014, Student filed a Due Process Complaint¹ (complaint) naming Upland Unified School District (District).

On July 18, 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.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 complaint alleges: Student is 17 years old, resides within District and attends ninth grade in a private school. Student was enrolled in California Virtual Academy, a charter school program, for the 2010-2011 and 2011-2012 school years. Student left California Virtual Academy in 2012 and was enrolled in a private school. Student alleges District failed to offer Student a free appropriate public education for the 2012-2013 school year, including the extended school year.

The facts alleged in Student’s complaint are sufficient to put the District on notice of the issues forming the basis of the complaint. Although 16 pages of “Background” beginning with Student’s first diagnosis of hypotonia at the age of one, involve complaints and revive issues which have already been litigated or are barred by the statute of limitations (See OAH case no. 2012070420 [Student’s claims against District prior to July 13, 2010, barred by the two year statute of limitations]), the complaint describes specific events and communications by date and the individuals alleged to have been involved, pertinent to the 2012-2013 school year. These events and communications concern District’s alleged failure to conduct assessments, convene an IEP team meeting and offer Student a FAPE. Student

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).

alleges, as the result of District's failure to offer Student a FAPE, Parent seeks compensatory education and reimbursement for Parent's private placement.

Student identifies adequate related facts, pertaining to the school year at issue, to permit District to respond to the complaint, participate in a resolution session and mediation and prepare for hearing.

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: July 22, 2014

/s/

MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings