

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. 2015061182

ORDER DETERMINING STUDENT'S
COMPLAINT SUFFICIENT

On June 19, 2015 Student filed a Due Process Hearing Request¹ (complaint) naming Cupertino Union School District, contending that District denied Student a free appropriate public education during the period from June 2013 to June 2015, by committing several procedural and substantive violations of the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000, et seq.; Cal. Code. Regs., tit. 5, § 3000 et seq.).

On June 29, 2015, District timely filed a Notice of Insufficiency (NOI) as to Student's complaint. For the reasons discussed below, Student's complaint is sufficient.

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

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).

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 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

Student’s allegations satisfy liberal pleading requirements because the facts alleged are sufficient to put District on notice of the issues forming the basis of Student’s claims. The complaint alleges: Student was nine years old and in third grade at the time of the complaint and has attended school in the District at all relevant times. District found Student eligible for special education in April 2013 under the eligibility category of Other Health Impairment based on his Attention Deficit Hyperactivity Disorder. District identified Student’s needs in reading and behavior, developed goals for Student in those areas, and provided Student resource specialist program services and counseling. District conducted occupational therapy and assistive technology assessments of Student, and funded an independent educational evaluation of Student’s psychoeducational needs that determined Student also met eligibility criteria in the categories of emotional disturbance, and specific

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

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).

learning disability in reading fluency. The IEE recommended, among other things, individual therapy for Student, development of a behavior support plan, and one-on-one aide support. District IEP offers in March 2014 and May 2014 added assistive technology and occupational therapy services for Student, a behavior support plan, one-on-one aide support, and individual counseling and mental health consultation. Parents agreed to the additional services but disagreed with the statement of Student's present levels of performance, proposed goals, the IEPs' failure to identify communication deficits as a need, and the alleged failure of the resource specialist program to offer student a research-based curriculum taught by a special education teacher. At Student's May 2015 annual IEP, Parents objected to the statement of Student's present levels of performance, proposed goals, a proposed "fade" of Student's one-on-one aide support, and District failure to implement the levels of assistive technology services and daily resource specialist support stated in Student's IEP, because Student was in the resource specialist classroom for only two-thirds of the time specified in his IEP, and the resource specialist teacher was present only two days per week.

The issues in the complaint include whether District denied Student a FAPE from June 2013 to June 2015 by: (a) failing to accurately assess and/or report Student's present levels of performance; (b) failing to provide the assistive technology and resource specialist program services specified in Student's IEP; (c) failing to use an appropriately credentialed provider for Student's resource specialist program services; and (d) failing to develop appropriate goals in all areas of need and make an offer of special education and related services that was reasonably calculated to provide Student and educational benefit.

Student has identified the issues and adequate related facts about each issue to permit District to respond to the complaint and prepare for and participate in a resolution session, mediation and due process hearing.

ORDER

1. Student's 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 1, 2015

/s/
ROBERT MARTIN
Administrative Law Judge
Office of Administrative Hearings