BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
SPECIAL EDUCATION DIVISION
STATE OF CALIFORNIA

In the Matter of: STUDENT, Petitioner, vs. CULVER CITY UNIFIED SCHOOL DISTRICT, Respondent.	OAH No. N2006030516 **DETERMINATION OF SUFFICIENCY OF FIRST AM ENDED REQUEST FOR DUE PROCESS HEARING**

On March 24, 2006, the Office of Administrative Hearings (OAH) sustained a Notice of Insufficiency (NOI) regarding the due process hearing complaint request (Complaint) filed by attorney Carol Hickman Graham on behalf of Petitioner Student (Petitioner). The March 24, 2006 order specified that Petitioner was permitted to file an amended due process complaint within 14 days of the date of the order. Thereafter OAH received Petitioner's First Amended Request For Due Process Hearing (Amended Complaint), dated March 30, 2006. On April 5, 2006, OAH received an NOI from attorney Karen Gilyard on behalf of Respondent Culver City Unified School District (District).

APPLICABLE LAW

The Individuals with Disabilities Education Improvement Act of 2004 became effective July 1, 2005, and significantly amended Title 20 United States Code section 1415(b) and (c). Either party now has the right to challenge the sufficiency of any due process hearing complaint notice (Complaint). In addition, a party filing the Complaint is not entitled to a hearing if it does not comply with subparagraph (b)(7)(A). The specific subsections at issue are:

20 U.S.C. § 1415 (c)(2)(A), provides that either party has the right to challenge the sufficiency of any Complaint.

20 U.S.C. § 1415 (b)(7)(B), provides that a party filing the Complaint is not entitled to a due process hearing if the Complaint does not comply with 20 U.S.C. § 1415 (b)(7)(A).

20 U.S.C. § 1415 (b)(7)(A)(ii)(III), provides that the Complaint shall include "a description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem…."

20 U.S.C. § 1415 (b)(7)(A)(ii)(IV), provides that the Complaint shall also include "a proposed resolution of the problem to the extent known and available to the party at the time."

20 U.S.C. § 1415 (c)(2)(C), provides that the party providing notification of the insufficiency of the Complaint shall do so within 15 days of receiving the Complaint.

20 U.S.C. § 1415 (c)(2)(D), provides that within 5 days of receipt of a notice of insufficiency, the hearing officer shall make a determination on the face of the Complaint whether it meets the requirements of subdivision (b)(7)(A).

20 U.S.C. § 1415 (c)(2)(E), provides that a party may amend the Complaint only if the hearing officer grants permission, or as otherwise specified.

20 U.S.C. § 1415(c)(2)(E)(ii), provides that the applicable timelines for a due process hearing shall commence anew upon the filing of an amended Complaint.

Moreover, fundamental principles of due process apply to these types of administrative proceedings. As such, a respondent is entitled to know the nature of the specific allegations in order to prepare a defense. (*Tadano v. Manney* (9th Cir. 1947) 160 F.2d 665, 667; *Hornsby v. Allen* (5th Cir. 1964) 326 F.2d 605, 608.)

The House Committee on Education and the Workforce, in its analysis of Section 1415(b)(7)[1], stated that the requirement of a clear and specific Notice is essential to make the complaint process work in a fair and equitable manner. (H.R.Rep. No. 108-77, 1st Sess. (2003).)[2] The Senate Committee on Health, Education, Labor and Pensions, in its analysis of Section 1415(b)(7), stated, "The purpose of the sufficiency requirement is to ensure that the other party, which is generally the school district, will have an awareness and understanding of the issues forming the basis of the complaint." (Sen.Rep. No. 108-185, 1st Sess., page citation unavailable (2003).) The purpose of Section 1415(b)(7) is to avoid leaving the school district with no idea as to what the real issues will be at the due process hearing, and forcing the district to prepare for any and every issue that could be possibly raised against it. (*Ibid*.) In addition, the specificity requirements of Section 1415(b)(7) allow a school district to provide, if necessary, a specific response to the student under Section 1415(c)(2)(B), and to participate fully in the informal resolution process under Section 1415(f)(a)(B) and mediation under Section 1415(e). (*Ibid*.)

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[1] Unless otherwise indicated, all statutory references are to Title 20, United States Code.

[2] The House Report noted, "If a parent cannot identify a specific problem, then the parent should ask to reconvene the IEP [Individualized Education Program] Team and discuss what their [sic] concerns are rather than filing a complaint to see if a hearing officer can determine the problem." (H.R.Rep. No. 108-77, 1st Sess., page citation unavailable (2003).)

The degree of sufficiency necessary for any request for due process hearing can best be determined by reviewing the requirements placed on the party who must respond to such a request. 20 U.S.C. section 1415, subdivision (c)(2)(B)(i)(I) requires the respondent to file a detailed response that includes:

> (aa) an explanation of why the [district] proposed or refused to take the action raised in the complaint;
> (bb) a description of other options that the IEP Team considered and the reasons why those options were rejected;
> (cc) a description of each evaluation procedure, assessment, record, or report the [district] used as the basis for the proposed or refused action; and
> (dd) a description of the factors that are relevant to the agency's proposal or refusal.

Examining these requirements, it is evident that any request for due process must describe the acts or omissions of the respondent, and other complaints, with the same degree of specificity that is called for in the response to the notice.

DISCUSSION

One key problem with the Amended Complaint is that it does not clearly designate what are the actual issues to be heard. Instead, the Amended Complaint's issues are buried within the factual allegations. Nevertheless, as the District points out in its NOI, the factual allegations present two issues: (1) denial of a free appropriate public education (FAPE) due to failure to offer an appropriate placement; and (2) denial of FAPE due to failure to implement the individualized education program (IEP). Moreover, the Amended Complaint provides some necessary relevant factual information that was lacking in the prior Complaint.

Regarding the placement issue, the Amended Complaint provides sufficient information regarding why the Vista School placement was inappropriate for him, specifically that it was not in the least restrictive environment (LRE), that it lacked appropriate role models, and that Petitioner suffered increased behavioral and emotional problems as a result of his attendance there. The Amended Complaint also contains required information such as the time period in dispute concerning this claim and the type of placement that would have been appropriate. Overall, the Amended Complaint contains sufficient information to state a claim regarding the placement offer for the 2004-2005 and 2005-2006 school years.

Regarding the second issue, the Amended Complaint identifies two areas of alleged nonconformity with the IEP: occupational therapy and counseling. The claim regarding occupational therapy identifies the time period of the alleged nonconformity, identifies the specific IEP document with which the services failed to conform, and specifies the amount and frequency of services that should have been provided pursuant to that IEP. Hence, the

Student sufficiently stated his claim that the District failed to provide occupational therapy in conformity with the IEP.

However, the Amended Complaint lacks such details regarding the claim that the District failed to provide counseling services in conformity with the IEP. The Amended Complaint does not identify what time period the alleged nonconformity occurred, what services should have been provided, or what governing IEP document was. Given the absence of such information, the Amended Complaint does not sufficiently plead this issue, and the District's challenge to the sufficiency of this issue is sustained.

The Amended Complaint also identifies proposed resolutions of compensatory education and prospective placement in a certified nonpublic school. These proposed resolutions are identified sufficiently enough to meet the requirements of Section 1415(b)(7).

ORDER

1. Petitioner's claim that the placement offer denied him a FAPE is deemed sufficient. Therefore, the District's motion to dismiss that claim due to insufficiency is denied.

2. Petitioner's claim that the District failed to provide occupational therapy services in conformity with the June 10, 2005 IEP is deemed sufficient. Therefore, the District's motion to dismiss that claim due to insufficiency is denied.

3. Petitioner's claim that the District failed to provide counseling services in conformity with his IEP is deemed insufficient, and therefore this claim is dismissed.

4. Pursuant to 20 U.S.C. §1415 subsection (c)(2)(E)(ii), Petitioner shall be permitted to file an amended due process complaint no later than 14 days from the date of this Order.[3]

5. If Petitioner fails to file an amended due process complaint within 14 days, the counseling issue shall be dismissed.

Dated: April 12, 2006

SUZANNE B. BROWN
Administrative Law Judge
Special Education Division
Office of Administrative Hearings

[3] The filing of an amended complaint restarts the applicable timelines for a due process hearing (§1415(c)(2)(E)(ii).)