

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

HOLLISTER SCHOOL DISTRICT.

OAH CASE NO. 2010010276

DETERMINATION OF SUFFICIENCY
OF FIRST AMENDED DUE PROCESS
COMPLAINT

On January 7, 2010, Parent, on behalf of Student (herein, Student) filed a Due Process Hearing Request¹ (complaint) naming the Hollister School District (District) as the respondent.

On January 13, 2010, the District filed a Notice of Insufficiency (NOI) as to Student's complaint.

On January 25, 2010, OAH issued an Order determining that issues two, four, and portions of Student's issue three were sufficient. The order further determined that Student's issue one, and portions of issue three were insufficiently pled. With respect to issue one the order stated:

Issue one alleges that the District found Student eligible for special education and related services at an IEP meeting held February 1, 2007, but failed to make an offer of placement and services. Student acknowledges that this IEP meeting is outside the statute of limitations, but states that the District's violations of his rights continued until August 29, 2008, and he makes his claims based upon the alleged continuing violations. However, it is unclear from issue one if there was an IEP in effect for Student during the pertinent time period and, if so, what aspects of the IEP Student contends failed to offer him a free appropriate public education (FAPE). If Student alleges that the District did not develop any IEP for him during this time, he needs to so allege. IF his contention is that the District did develop an IEP for him but that aspects of it did not provide him

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).

a FAPE, he must indicate which portions of the IEP were deficient and why.

With respect to the relevant portions of issue three the order determined the following was insufficient:

In the first paragraph of issue three, Student also alleges that the District's offer of 60 minutes a week of speech and language therapy was insufficient to meet his needs. This allegation is insufficient because it fails to state why the 60 minutes offered did not meet Student's needs and does not identify the amount of services he required. Paragraph four of issue three contains allegations concerning Student's need for assessment and services in the area of occupational therapy (OT). However, it is unclear from this paragraph whether the District assessed Student in this area, but failed to assess in areas Student believes should have been part of the scope of the assessment, or if the District simply did not administer any type of OT assessment. Also unclear is whether the District's IEP offer included any OT services, or if the OT services included were just not adequate to meet Student's needs. Additionally, the complaint fails to identify with specificity what Student's OT needs are, how Student has determined those needs, and what Student believes the District should be providing in order for his OT needs to be fully addressed.

On February 9, 2010 Student timely filed a First Amended Due Process Hearing Request (first amended complaint).

On February 12, 2010 the District filed a NOI as to Student's first amended complaint in which District contends that the first amended complaint failed to address the insufficiencies identified in the order issued on January 25, 2010.

APPLICABLE LAW

The respondent to a due process hearing request has the right to challenge the sufficiency of the complaint. (20 U.S.C. § 1415(b) & (c).)² The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of 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

² All statutory citations are to Title 20 United States Code unless otherwise noted.

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 ALJ.⁷

DISCUSSION

Issues two, four, and portions of issue three were deemed sufficient in the Order issued by OAH on January 25, 2010 and are not addressed below. Issue one of Student’s amended complaint alleges the identical facts set forth in the original complaint and makes a claim for compensatory education commencing with a period well outside the two-year statute of limitations. With regard to issue one of the amended complaint, the allegations remain insufficient because it is still unclear from the pleading if there was an IEP in effect for Student during the pertinent statutory time period and, if so, what aspects of the IEP Student contends failed to offer him a free appropriate public education (FAPE). Issue one still fails to identify the issues and adequate related facts about the problem to permit District to respond to the complaint and participate in a resolution session and mediation. Therefore, issue one of Student’s amended complaint is insufficient.

However, issue three of the amended complaint in its entirety does meet the statutory pleading requirements set forth above. In paragraph one of issue three of the amended complaint Student alleges facts that state why the August 29, 2008, IEP offer of 60 minutes of group speech and language therapy was inadequate to meet Student’s needs and identifies the amount of individual speech and language services he required in order to receive a FAPE. Paragraph four of issue three of the amended complaint alleges District failed to assess Student in areas of suspected disability in the area of OT and failed to offer OT services in the August 29, 2008, IEP. Issue three further identifies the areas in which District failed to assess Student for purposes of providing Student OT services to meet his OT needs. Issue three of the amended complaint is sufficiently pled to put the District on notice of the

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).

issues forming the basis of the complaint. Therefore, issue three of Student's amended complaint is sufficient.

ORDER

1. Issues two, three, and four of Student's first amended complaint are sufficient under section 1415(b)(7)(A)(ii).

2. Issue one of Student's first amended complaint is insufficiently pled under section 1415(c)(2)(D).

3. Student shall be permitted to file a second amended complaint under section 1415(c)(2)(E)(i)(II).⁸

4. The amended complaint shall comply with the requirements of section 1415(b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.

5. If Student fails to file a timely second amended complaint, the hearing shall proceed only on Issues two, three, and four in Student's first amended complaint.

Dated: February 17, 2010

/s/

STELLA OWENS-MURRELL
Administrative Law Judge
Office of Administrative Hearings

⁸ The filing of an amended complaint will restart the applicable timelines for a due process hearing.