

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

VAL VERDE UNIFIED SCHOOL
DISTRICT & RIVERSIDE COUNTY
OFFICE OF EDUCATION.

OAH CASE NO. 2010020079

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On February 1, 2010, Student filed a Due Process Hearing Request¹ (complaint) naming Val Verde Unified School District (District) and Riverside County Office of Education (RCOE) as respondents. On February 9, 2010, District timely filed a Notice of Insufficiency (NOI). As discussed below, the complaint is insufficient in part.

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 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

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)

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.

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

Here, Student has alleged a lengthy history of her educational program, assessments and IEP team meetings both prior to, and during her enrollment in the District. For the time period two years prior to the filing of the complaint, the factual allegations mainly consist of recitals of IEP notes or the content of District assessments. Issue One makes two contentions. First, that Student was denied a FAPE during the statute of limitations because she was not assessed in all areas of suspected disability and second, that the triennial assessment was late and “cursory at best.” Despite the length of the complaint, the ALJ could not find any allegation stating directly, or even by inference, what areas of suspected disability the District should have, but did not, assess either prior to, or as part of, the triennial assessment. Accordingly, Issue One is insufficient.

Issue Two alleges that Student was denied a FAPE during the two year statute of limitations because her IEP failed to include adequate services to address her needs in the following areas: speech and language; communication; sensory integration; social skills; behavior; social emotional; parent and staff training; assistive technology; and English proficiency. Student also alleged “etc.,” which given the requirement that Student put the District on notice of a “problem,” is stricken. These allegations, although lengthy, are sufficiently specific to put the District on notice that Student is contending that at all relevant times, the services in her IEP failed to provide a FAPE. Issue Two is sufficient.

Issue Three alleges in part the same issue as Issue Two, that the services in Student’s IEP were inadequate. Issue Three also alleges that at all times during the statute of limitations period her IEPs failed to include appropriate: present levels of performance; goals; accommodations; and modifications. Student alleges these defects in respect to “all known, suspected needs.” To the extent Student contends she was denied a FAPE because her IEPs were inadequate to meet her “known” needs the complaint is sufficient. However, despite the length of the complaint, the ALJ could not find any allegation stating directly, or even by inference, what areas of “suspected needs” should have been addressed. Accordingly, Issue Three is insufficient.

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).

ORDER

1. Issue Two is sufficient.
2. Issues One and Three because it cannot be determined what areas of suspected disability Student contends should have been assessed and what “suspected needs” Student’s IEPs failed to address.
3. Student may file an amended complaint not later than 14 days from the date of this order.
4. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issue One to the extent it alleges the triennial assessment was late, Issue Two, and Issue Three to the extent it alleges that Student’s IEPs were inappropriate to meet her known needs.
5. Student’s allegations under Section 504 of the Rehabilitation Act of 1973 and Title 42, United States Code section 1983 are outside of OAH jurisdiction and are dismissed.

Dated: February 10, 2010

/s/

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings