

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

IRVINE UNIFIED SCHOOL DISTRICT,

v.

PARENT on behalf of STUDENT.

OAH CASE NO. 2010020165

DETERMINATION OF SUFFICIENCY  
OF DUE PROCESS COMPLAINT

On February 2, 2010, Sundee M. Johnson, attorney for the Irvine Unified School District (District), filed a Due Process Hearing Request (complaint) against Student. On February 19, 2010, District filed a motion to amend the complaint (amended complaint). On February 24, 2010, Michael E. Jewell, attorney for Student, filed an opposition to District's motion to amend. On March 3, 2010, OAH granted District's motion to amend and deemed the amended complaint filed as of March 3, 2010. OAH issued a new scheduling order on March 3, 2010, setting new mediation, pre-hearing conference and due process hearing dates.

On March 4, 2010, Student filed a Notice of Insufficiency (NOI) as to District's amended complaint.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.<sup>1</sup> 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 resolution of the problem to the extent known and available to the party at the time.<sup>2</sup> 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.<sup>3</sup>

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<sup>1</sup> 20 U.S.C. § 1415(b) & (c).

<sup>2</sup> 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV)

<sup>3</sup> See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”<sup>4</sup> 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.<sup>5</sup> Whether the complaint is sufficient is a matter within the sound discretion of the ALJ.<sup>6</sup>

## DISCUSSION

The Districts amended complaint contains two issues. The first issue is whether the District’s offer of placement and services, made at Student’s triennial IEP, which was developed June 1, June 17 and December 8, 2009, constitutes a free and appropriate public education [FAPE] in the least restrictive environment [LRE]. Respondent Student does not question the sufficiency of the first issue.

The amended complaint’s second issue is whether the District denied Student a FAPE by stopping reimbursement of Student’s parents, pursuant to a November 12, 2008 settlement agreement, for privately provided services. Student contends that this second issue is insufficient because the amended complaint does not include additional alleged facts regarding the settlement agreement.

The facts alleged in District’s amended complaint are sufficient to put the Student on notice of the issues forming the basis of the complaint. District need not assert additional details related to the settlement agreement. Student does not question the settlement agreement’s existence and the written agreement will speak for itself. District’s amended complaint identifies the issues and asserts adequate related facts about the problem to permit Student to respond to the complaint and participate in mediation.

Therefore, District’s statement of Issue 2 is sufficient.

## ORDER

1. The notice of insufficiency is denied.

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<sup>4</sup> Sen. Rep. No. 108-185, *supra*, at p. 34.

<sup>5</sup> *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.].

<sup>6</sup> 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).

2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: March 08, 2010

/s/

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CLIFFORD H WOOSLEY  
Administrative Law Judge  
Office of Administrative Hearings