

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

GLENDORA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010030733

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT AND
ORDER DENYING MOTION TO
DISMISS

On March 11, 2010, parent on behalf of Student filed a Due Process Hearing Request¹ (Complaint) naming Glendora Unified School District (District) as the respondent. Student's Complaint contains a proof of service which indicates under penalty of perjury that the complaint was served by facsimile on all parties on March 11, 2010.

On April 5, 2010, District filed a Notice of Insufficiency (NOI) and Motion to Dismiss as to Student's complaint. District asserts that it did not receive the complaint until March 22, 2010.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

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). All statutory citations are to title 20 United States Code unless otherwise noted.

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 section 1415(b)(7)(A).

The complaint is deemed sufficient unless a party notifies the Office of Administrative Hearings and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements.³

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.⁴ 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.⁵

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁶ 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.⁷ Whether the complaint is sufficient is a matter within the sound discretion of the ALJ.⁸

DISCUSSION

Student’s complaint was filed on March 11, 2010 and contains a proof of service indicating that all parties were served by facsimile on that date. District indicates in its NOI that it received the complaint on March 22, 2010. District’s NOI was dated, filed with OAH, and served on April 5, 2010, which is more than 15 days after the complaint was filed, but within 15 days of the date District claimed to have received Student’s Complaint. The evidence was not conclusive as to the timeliness of the NOI. However, the timeliness of the NOI is of no consequence because the complaint is sufficient.

² 20 U.S.C. § 1415(b) & (c).

³ 20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).

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

⁵ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁶ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁷ *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.].

⁸ 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).

The facts alleged in Student's complaint are sufficient to put the District on notice of the issues forming the basis of the complaint. Student's complaint identifies the issues and adequate related facts about the problems to permit District to respond to the complaint and participate in a resolution session and mediation.

The complaint states the following issues:

1. Did District fail to assess Student in all areas of suspected disability when it failed to conduct a functional analysis assessment (FAA)?
2. Has the District provided Student with a free appropriate public education in the least restrictive environment?
3. Is Student entitled to an independent educational evaluation (IEE) at public expense?

As remedies, the complaint seeks an FAA, IEE, behavior services, a less restrictive placement and provision of RSP support.

Each of the claims raised by the Student's complaint states facts and seeks resolutions within the jurisdiction of OAH.

ORDER

1. The complaint is sufficient under section 1415(b)(7)(A)(ii).
2. The motion to dismiss is denied.
3. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: April 19, 2010

/s/

GLYNDA B. GOMEZ
Administrative Law Judge
Office of Administrative Hearings