

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

IRVINE UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2010040740

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On April 12, 2010 Kathleen M. Loyer, Attorney for Student, filed a Due Process Hearing Request (complaint) naming Irvine Unified School District (District).¹

On April 27, 2010, S. Daniel Harbottle and Sara C. Young, Attorneys for District, filed a Notice of Insufficiency (NOI) as to Student's complaint.

APPLICABLE LAW

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).

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

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.

requirements should be liberally construed in light of the broad remedial purposes of the Individuals with Disabilities Education Act 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 Administrative Law Judge.⁷

DISCUSSION

Issue No. 1

Student claims District failed to develop an individualized education program (IEP) that appropriately addressed all of Student's unique needs in attention deficit, impulse and anxiety, and social skills (pragmatic language). Student has stated sufficient facts related to the issue, and the claim is legally sufficient.

Issue No. 2

Student claims District failed to assess Student with regard to autistic-like behaviors and executive function as recommended in the IEP dated February 15, 2007, and failed to assess according to an assessment plan of April 3, 2007. Student has stated sufficient facts related to the issue, and the claim is legally sufficient.

Issue No. 3

Student claims District failed in the January 2010 IEP to find Student eligible for special education services although he was eligible due to his social emotional functioning, and attention and anxiety deficits. Student has stated sufficient facts related to the issue, and the claim is legally sufficient.

Issue No. 4

Student claims District failed to provide appropriate designated instruction and services in social skills training and mental health. Student has stated sufficient facts related to the issue, and the claim is legally sufficient.

Although some of the related facts are not included within the descriptions of Issue No. 2, 3, and 4, they are included in the narrative portion of the complaint. Therefore, Student has stated sufficient facts relating to these issues, and the claims are legally

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).

sufficient. However, Student is advised to further clarify Issue No. 2, 3, and 4, in preparation for the prehearing conference and the due process hearing.

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

Therefore, Student's statement of the four claims is sufficient.

District's motion to dismiss will be addressed separately.

ORDER

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

Dated: April 28, 2010

/s/

TROY K. TAIRA
Administrative Law Judge
Office of Administrative Hearings