

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

OXNARD UNION HIGH SCHOOL
DISTRICT.

OAH CASE NO. 2010060071

DETERMINATION OF
INSUFFICIENCY OF DUE PROCESS
COMPLAINT

On May 27, 2010 Student filed a Due Process Hearing Request¹ (complaint) naming Oxnard Union High School District (District) as the respondent. The complaint did not contain a proof of service. The District did not receive the complaint until June 11, 2010. On June 24, 2010, District timely filed a Notice of Insufficiency (NOI). As discussed below, the complaint is insufficient, but Student will be given an opportunity to amend it.

APPLICABLE LAW AND ANALYSIS

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 requirements should be liberally construed in light of the broad remedial purposes of

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 subsequent statutory references are to title 20 United States Code.

² § 1415(b) & (c).

³ § 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.

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

Here, the first problem identified in the complaint expresses disagreement with the “program” in a recent IEP, but provides no facts about what Student’s parent disagrees with. There is no way to tell if Student is challenging placement, related services, goals, or any other aspect of a particular IEP. Further, there is no proposed resolution setting forth what Student’s parent seeks from the District that would solve the problem. The proposed resolution in the complaint refers to someone knowing that “many children” including Student, need a program that follows the current program. From the above, the District cannot determine how exactly Student is alleging he was denied a free appropriate public education and what District could do to solve the problem.

The second problem identified in the complaint is similarly deficient. The problem refers to trying to get a program in place for two years so that when Student was “of age” there would be a program in place. It is not clear whether the “problem” is referring to services in the past or in the future, and exactly what those are and why they do or do not meet Student’s unique needs. The proposed resolution seeks that the District “put a program together that is appropriate for autistic students” without any specific allegations about what program Student needs that the District has not provided. The above allegations are also insufficient to put the District on notice of the “problem” and what Student’s parent seeks to resolve the problem.

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. Student's complaint is insufficient.
2. Student shall be permitted to file an amended complaint not later than 14 days from the date of this order. Student's parent is advised that under Education Code section 56505, a parent who is not represented by an attorney may request that the Office of Administrative Hearings provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. Parents are encouraged to contact OAH for assistance in amending the complaint.
3. If Student fails to file a timely amended complaint, the complaint will be dismissed.
4. All dates previously set in this matter are vacated.

Dated: June 25, 2010

/s/

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings