

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

HUNTINGTON BEACH CITY SCHOOL
DISTRICT.

OAH CASE NO. 2010080813

DETERMINATION OF SUFFICIENCY
OF AMENDED DUE PROCESS
COMPLAINT

On August 24, 2010, Student filed a Due Process Hearing Request¹ (complaint) naming Huntington Beach City School District (District) as the respondent. The complaint alleged three issues. On September 13, 2010, the complaint was found insufficient as to the second issue and Student was given leave to amend the complaint. On September 27, 2010, Student filed an amended due process hearing request (amended complaint). The amended complaint made changes to the second issue, which alleges that Student was denied a FAPE because, during the time period in which he had yet to be found eligible for special education, he was subjected to inappropriate verbal and physical treatment from school staff, which resulted in a decline in emotional state and academic performance. On October 4, 2010, District timely filed a Notice of Insufficiency (NOI) as to the second issue in the amended complaint. District contends that the second issue is insufficient because it is merely alleging tort claims that are outside of OAH jurisdiction during a time period in which Student had yet to be found eligible for special education. On October 4, 2010, Student filed a reply. As discussed below, issue two is sufficient, such that the amended complaint is sufficient.

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).

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 unless otherwise indicated.

² § 1415(b) & (c).

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 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

DISCUSSION

Here, District is correct that OAH would not have jurisdiction to resolve tort or discrimination claims. However, issue two is clearly phrased as a claim within OAH jurisdiction, i.e. that Student was denied a FAPE because he experienced an educational decline as a result of the actions of teachers. In other words, Student is alleging that the instruction and discipline methods used were inappropriate based on Student’s social-emotional and attention needs. Whether or not issue two has merit as a FAPE claim is an issue for hearing.

Although it can be said that Student’s issue one “child find” claim by nature includes an allegation that District should have, but did not, find Student eligible and provide him with an appropriate placement, issue two is not rendered insufficient because it overlaps issue one in some respect. To the contrary, issue two provides District with notice of a very specific claim about why the placement and instructional methods were inappropriate during

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.

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).

a time period in which Student contends District should have been providing him with special education. The amended complaint is sufficient.

ORDER

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

Dated: October 5, 2010

/s/

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings