

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MONTECITO UNIFIED SCHOOL
DISTRICT & SANTA BARBARA
SCHOOL DISTRICT.

OAH CASE NO. 2010110031

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On October 29, 2010, Student filed a Due Process Hearing Request¹ (complaint) naming Montecito Unified School District (MUSD) and Santa Barbara School District (SBSD) as respondents. As to MUSD, the complaint alleges that it is a party, that Student resides within its boundaries and the boundaries of SBSD, that Student attended school in MUSD through the end of his sixth grade year in the 2009-2010 school year, and that during an IEP convened by SBSD in spring of 2010 parents requested that Student repeat sixth grade in MUSD. The three issues for hearing identified in the complaint, as well as the proposed resolutions, were all directed toward SBSD, and cannot be construed to allege any IDEA violations as to MUSD. Specifically, the issues identified in the complaint were whether SBSD denied Student a FAPE by: 1) not offering to allow him to repeat sixth grade; 2) not offering services from a particular provider; and 3) withdrawing a transition plan offer when Student failed to enroll for the current school year. The proposed resolutions only referred to relief from SBSD for its failure to provide a FAPE.

On November 8, 2010, MUSD timely filed a Notice of Insufficiency (NOI), which contended that the complaint was insufficient because no issues, relevant facts, or proposed resolutions were alleged as to MUSD. In addition, MUSD requested that any NOI ruling not grant Student leave to amend based on MUSD's position that amendment would be futile because the complaint is meritless as to MUSD and that MUSD would suffer prejudice from having to defend against a new complaint. As discussed below, MUSD is correct that the complaint fails to give it the required notice. However, under the facts, Student will be given leave to amend.

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).

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 Title 20 United States Code 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 the IDEA and the relative informality of the due process hearings it authorizes.⁶

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.

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.].

Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁷

DISCUSSION

Here, the complaint fails to identify any issues or relevant facts related to how MUSD deprived Student of a FAPE. Instead, the allegations of the complaint are limited to an IEP conducted by SBSB in May and June of 2010, the offer of placement and services made by SBSB at that IEP, and a September of 2010 letter from SBSB to parents. Similarly, the proposed resolutions all refer to SBSB. Accordingly, because the complaint provides no notice to MUSD of any IDEA violation, it is insufficient as to MUSD.

MUSD asks that the NOI be granted without leave to amend. MUSD argues that leave to amend is discretionary and should be denied. In particular, MUSD contends amendment would be futile because the issue of whether Student should advance to seventh grade has been determined by stay put arguments in federal court and OAH, such that MUSD does not have any duty to educate Student during the 2010-2011 school year. MUSD also argues that it would be prejudiced by permitting amendment to allow Student to raise the same claims he has raised before against MUSD because it is already litigating past claims with Student. MUSD's request to deny leave to amend fails because special education law contains no procedure that would allow for a fact-based, pre-hearing determination that a party could not raise any meritorious claims. Similarly, special education law does not contain a "prejudice" exception for permitting amendment of due process hearing requests in order to spare a respondent from participating in multiple legal proceedings. To the contrary, special education law expressly permits the filing of multiple, serial due process hearing requests on different issues, without any regard to the burden on the responding educational agency. (See 20 U.S.C. § 1415(o), Ed. Code, §56509.) Here, neither MUSD, nor the ALJ ruling on this motion can predict exactly what Student will allege if given an opportunity to amend. Thus, because it cannot be determined from the complaint what Student's legal theory is against MUSD for the 2010-2011 school year, Student should be given a chance to clarify his theories prior to any determination on the merits.

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 insufficiently pled under section Title 20 United States Code 1415(c)(2)(D) at to MUSD.
2. Student shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).
3. The amended complaint shall comply with the requirements of Title 20 United States Code section 1415(b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order. If an amended complaint is filed, all hearing dates will be reset.
4. If Student fails to file a timely amended complaint as to MUSD, MUSD will be dismissed as a party, and the hearing will proceed only with SBSB as a respondent.

Dated: November 9, 2010

/s/

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings