

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

NEWPORT-MESA UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2011010026

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On February 24, 2011, Student filed a second amended Due Process Hearing Request (complaint) naming District as the respondent. On March 4, 2011, District filed a combined Notice of Insufficiency (NOI) and motion to dismiss Issue One. No opposition was received. As discussed below, the complaint is sufficient only as to the issues identified by the ALJ in this Order, and Issue One will be dismissed because it does not state an IDEA issue for hearing.

*NOI*

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

---

<sup>1</sup> 20 U.S.C. § 1415(b) & (c).

<sup>2</sup> 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

<sup>3</sup> See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”<sup>4</sup> 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.<sup>5</sup> Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.<sup>6</sup>

Student’s second amended complaint is sufficient to put the District on notice of the issues forming the basis of the complaint. Issue One, although contested by the District, clearly seeks enforcement of a recent settlement agreement term. Issue Two clearly identifies, with sufficient relevant facts, that Student claims he was denied a FAPE because the January 7, 2010 IEP did not contain appropriate OT and behavior services. Issue Three adequately alleged that District failed to properly assess Student’s behavior needs after January of 2010. Issue Four adequately alleges that District’s offer of placement, services and a BIP in the fall of 2010 was inadequate to offer Student a FAPE. Issue Four also alleges Student was denied a FAPE because his placement at Paularino Elementary School during 2011 was inappropriate. As to all issues, Student has set forth proposed resolutions. Accordingly, the complaint is sufficient.

#### *Motion to Dismiss*

District contends Issue One must be dismissed because it is not a proper issue for hearing. Specifically, that Issue One does not allege a denial of FAPE in any way and that given the procedural posture of the case, mutually agreeable hearing dates. Although not raised by District, it is also a consideration that just because the parties agree to dates does not mean that OAH will grant them.

Parents have 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).) OAH has jurisdiction to hear due process claims arising under the Individuals with Disabilities Education Act (IDEA). (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9<sup>th</sup> Cir. 2000) 223 F.3d 1026, 1028-1029 [hereafter *Wyner*].) OAH has granted motions to

---

<sup>4</sup> Sen. Rep. No. 108-185, *supra*, at p. 34.

<sup>5</sup> *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.].

<sup>6</sup> 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).

dismiss allegations that are facially outside of OAH jurisdiction, e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc....

Here, Issue One on its face does not allege a FAPE issue and instead seeks only enforcement of a settlement agreement term. Further, District is correct that at the time of filing, it was premature for the parties to discuss mutually agreeable dates. Accordingly, Issue One should be dismissed on the ground that it fails to present a proper issue for hearing. The parties are reminded that if they seek a continuance, OAH will set the hearing dates based on a variety of factors, only one of which is mutual agreement of the parties.

#### ORDER

1. District's Motion to Dismiss Issue One is granted and the hearing shall proceed on Issues Two through Four only, as set forth below.
2. The complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii) as to the following issues only:
  - a. Whether Student was denied a FAPE because the January 7, 2010 IEP did not contain appropriate OT and behavior services. (Issue Two);
  - b. Whether Student was denied a FAPE because District failed to properly assess Student's behavior service needs after January of 2010. (Issue Three);
  - c. Whether Student was denied a FAPE because the District's offer of placement, services and a BIP in the fall of 2010 was inappropriate to meet Student's needs. (Issue Four);
  - d. Whether Student was denied a FAPE because his placement at Paularino Elementary School during 2010 was inappropriate to meet his needs. (Issue Four).
3. Only the above issues were adequately pleaded in the Second Amended Complaint. Accordingly, the hearing shall proceed on the issues identified above, as no other procedural or substantive issues were adequately identified. If Student wishes to proceed to hearing on any other issues, he must seek leave to amend the Second Amended Complaint.
4. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: March 9, 2011

/s/

---

RICHARD T. BREEN  
Presiding Administrative Law Judge (acting)  
Office of Administrative Hearings