

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

DESERT SANDS UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011010990

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On January 28, 2011 Steven Wyner, Attorney for Student, filed a Due Process Hearing Request¹ (complaint) naming Desert Sands Unified School District (District) and Riverside County Department of Mental Health (CMH).

On February 11, 2011, Sharon A. Watt, Attorney for CMH, 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 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

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).

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 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

The facts alleged in Student’s complaint are sufficient to put District and CMH on notice of the issues forming the basis of the complaint.⁸ Student alleges three issues. First, Student alleges that during the 2008-2009 and 2009-2010 school years, District failed to address Student’s unique needs in the areas of behavior, social skills development, and communication instruction and interventions, thereby denying Student a FAPE. Student’s complaint includes related facts alleging District had knowledge of Student’s behaviors and incidents relating to inappropriate behaviors, social skills, and communications. This claim is legally sufficient.

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).

⁸ CMH raises issues related to the statute of limitations and other potential affirmative defenses. A NOI is not the proper means by which to seek determination of respondent’s contentions, as the only determination to be made upon the filing of a NOI is the sufficiency of the complaint on its face. CMH’s contentions may form the basis for an affirmative defense at hearing, or may be addressed in a properly filed motion to dismiss.

Second, Student alleges that during the 2008-2009 and 2009-2010 school years, District and CMH failed to address Student's unique mental health needs, including failing to offer or provide residential placement, 1:1 counseling and therapy, group therapy, and family therapy, thereby denying Student a FAPE. Student provides sufficient facts relating to Student's inappropriate behaviors and reported incidents at school during the alleged time frame and her placement in a residential treatment facility. This claim is legally sufficient.

Third, Student alleges that during the 2008-2009 and 2009-2010 school years, District and CMH failed to provide Student with reasonable accommodations, specifically mental health-specific special education services, and failed to design individualized education programs so that Student could make meaningful educational progress. Student provides sufficient facts relating to this claim and the claim is legally sufficient.

The facts alleged in Student's complaint are sufficient to put the respondents on notice of the issues forming the basis of the complaint. Student's complaint identifies the issues and adequate related facts about the problems to permit the respondents to respond to the complaint and participate in a resolution session and mediation. Accordingly, Student's three issues are legally sufficient.

A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (20 U.S.C. §1415(b)(7)(A)(ii)(IV).) Student's proposed resolutions request compensatory education, transportation, travel reimbursement, and various other reliefs. Student has met the statutorily required standard of stating a resolution to the extent known and available to her at the time.

ORDER

1. The complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: February 17, 2011

/s/

TROY K. TAIRA
Administrative Law Judge
Office of Administrative Hearings