

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PASADENA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011100084

ORDER DENYING NOTICE OF
INSUFFICIENCY OF DUE PROCESS
COMPLAINT

On October 03, 2011 Student filed a Due Process Hearing Complaint¹ (complaint) naming District. On October 14, 2011, District timely filed a Notice of Insufficiency (NOI) as to Student's complaint. For the reasons discussed below, the NOI is denied.

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

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).

⁴ 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.”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 Administrative Law Judge.⁷

DISCUSSION

Student’s complaint alleges five issues. The complaint is supported by general factual allegations along with additional facts in support of each issue, along with proposed resolutions.

Issue One alleges that District denied Student a free appropriate public education (FAPE) by failing to find Student eligible for special education and related services before April 2011 and from the beginning of Student’s education. Student supports this issue with one and one half pages of detailed facts. District contends that the complaint is insufficient because the complaint does not identify the time period in which Student contends District should have found him eligible. Issue One when read in conjunction with the entire complaint is sufficiently pleaded to permit District to participate in a resolution session, mediation, and hearing.

Issue Two alleges that District denied Student a FAPE by failing to provide him with an appropriate placement and related services from September 2009 through the time of filing. Student asserts that District failed to appropriately assess Student in all areas of unique needs, and failed to address his needs in all areas, including behavior, during the alleged time period. Issue Two is sufficiently pleaded to permit District to participate in a resolution session, mediation, and hearing.

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).

Issue Three alleges that District denied Student a FAPE by failing, in Student's April 21, 2011 individual education plan (IEP), to offer Student a formal resource support program (RSP) services which was specific and not vague. Student alleges that District failed to identify the frequency in which Student would receive RSP services, or whether the services would be pull-out or push-in. Issue Three when read in conjunction with the entire complaint is sufficiently pleaded to permit District to participate in a resolution session, mediation and hearing.

Issue Four alleges that District denied Student a FAPE by failing to assess Student in the area of behavior and by failing to conduct a functional analysis assessment and failing to provide appropriate behavior intervention services. Student asserts that his historic patterns of assaultive and aggressive behavior in the classroom impacted his access to education, and should have put District on notice of his unique need for behavior intervention services. Issue Four when read in conjunction with the entire complaint is sufficiently pleaded to permit District to participate in a resolution session, mediation, and hearing.

Issue Five alleges that District denied Student a FAPE by failing to conduct a psycho-educational assessment in preparation for Student's April 2011 IEP. Student alleges that he had a history of behaviors at school that suggested he might be eligible for special education and related services, including a behavior support plan, under the category of emotional disturbance. Issue Five when read in conjunction with the entire complaint is sufficiently pleaded to permit District to participate in a resolution session, mediation and hearing.

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: October 20, 2011

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings