

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

MORGAN HILL UNIFIED SCHOOL
DISTRICT and SAN JOSE UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2011100665

ORDER OF DETERMINATION OF
SUFFICIENCY OF ISSUE THREE OF
THE DUE PROCESS COMPLAINT

On October 19, 2011, Parents on behalf of Student (Student) filed a Due Process Request (complaint) naming the Morgan Hill Unified School District (MHUSD) and the San Jose Unified School District (SJUSD) as respondents. The complaint contains four claims.¹ The first claim contends that the respondents failed to properly assess Student in all areas of suspected disability. Issue two contends that the respondents have failed to provide Student a free appropriate public education (FAPE) by failing to design Individualized Education programs (IEPs) which met Student's unique educational needs. Issue three contends that the respondents failed to in their child find duties because "both Districts failed to seek and find [Student's] need for related services, especially in the areas of his emotion/social/behavior needs." (Complaint at p.17.) In issue five, Student contends that the respondents committed a procedural violation of the IDEA by failing to give prior written notice.

On October 28, 2011, SJUSD filed a motion to dismiss issue three on grounds that Student has failed to allege facts to support his claim. Student has not responded to the motion. SJUSD contends that Student's issue three is not sufficient to state a claim. Thus, SJUSD's motion is deemed a notice of insufficiency (NOI) as to the third issue. Student has not filed a response to SJUSD's NOI.

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

¹ The complaint numbers the claims one, two, three and five.

² 20 U.S.C. § 1415(b) & (c).

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

DISCUSSION

The IDEA and state law impose upon each school district the duty, under child find, to actively and systematically identify, locate, and assess all children with disabilities or exceptional needs who are in need of special education and related

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.].

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).

services. (20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111(a)(ii) (2006); Ed. Code, §§ 56300, 56301.) This obligation is known as “child find”, and is expressly provided for in the IDEA at Title 20 United States Code section 1412(a)(3)(A). The child find obligation applies also to children who are suspected of being a child with a disability and in need of special education even though they may be advancing from grade level to grade level. (34 C.F.R. § 300.111(c)(1) (2006).) “The purpose of the child-find evaluation is to provide access to special education.” (*Fitzgerald v. Camdenton R-III Sch. Dist.* (8th Cir. 2006) 439 F.3d 773, 776.) A local education agency must have developed a practical method, and implemented that method, to determine which children with disabilities are currently in need of receiving special education and related services.

California specifically obligates a district to actively and systematically to seek out “all individuals with exceptional needs.” (Ed. Code, § 56300 et seq.) A district’s child find obligation toward a specific child is triggered when there is reason to suspect a disability and reason to suspect that special education or related services may be needed to address that disability. (*Dept. of Education, State of Hawaii v. Cari Rae* (D. Hawaii 2001) 158 F. Supp. 2d 1190, 1194.) The threshold for suspecting that a child has a disability is relatively low. (*Id.*, at p. 1195.) A district’s appropriate inquiry is whether the child should be referred for an evaluation, not whether the child actually qualifies for services. (*Ibid.*) The district must respond within a reasonable time after obtaining notice of the potential disability and need for services. (*Id.*, at p. 1193-1194.)

Student alleges in his complaint that at the age of four, Student was assessed and found eligible for special education by SJUSD. (Complaint at p. 4, line 11.) In effect, Student is admitting that SJUSD has met its child find obligations. Student’s allegations in issue three are nothing more than a restatement of the allegation that Student was not provided a FAPE because his IEP failed to meet his unique educational needs.

As a matter of law, Student’s third issue alleges a claim for child find which is insufficiently pled as discussed above.

ORDER

1. Issue Three of Student’s complaint is insufficiently pled under section Title 20 United States Code 1415(c)(2)(D).
2. Issues One, Two and Five (sic) of Student’s complaint are sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).

3. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).⁸

4. 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.

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues One, Two and Five (sic).

Dated: November 4, 2011

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings

⁸ The filing of an amended complaint will restart the applicable timelines for a due process hearing.