

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

NEWPORT-MESA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011110175

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT AND GRANTING
MOTION TO DISMISS CERTAIN
CLAIMS

On November 2, 2011, Student's parents on behalf of Student filed a due process hearing request¹ (complaint) naming the Newport-Mesa Unified School District (District). On November 29, 2011, Student filed an amended due process hearing request (amended complaint).

On December 12, 2011, the District filed a notice of insufficiency (NOI) as to Student's amended 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 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

This is the second time the District has filed an NOI in this case. The District previously filed an NOI as to Student’s initial complaint. That complaint was found to be sufficiently pled, in part, and insufficiently pled, in part. After the OAH order was issued, Student amended the complaint to add more factual information in response to some of the concerns raised in OAH’s order.

OAH previously found that issues 1(a), 1(b), 1(c), 1(d), and 1(d)(2) were sufficiently pled. Those issues have stayed substantially the same in the amended complaint, so they are still sufficiently pled.

Issue 1(e) and Issue 2 involve problems Student has negotiating the school environment. The previous OAH order found these claims insufficient because they did not provide details of the injuries Student allegedly sustained. The amended complaint adds specific factual allegations to recite the injuries. These two issues are sufficiently pled.

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).

Issue 1(f) relates to the current educational placement and how it fails to meet Student's needs. Although it could be more clearly alleged, it is sufficient to put the District on notice as to the basis for the allegation.

The District also seeks to dismiss the allegations in the amended complaint related to Section 504 of the Rehabilitation Act of 1973 and Title 42 United States Code section 1983, on the basis that those allegations are beyond the jurisdiction of OAH to decide. The District is correct. Those allegations are beyond the jurisdiction of OAH and must be dismissed from the amended complaint.⁸

ORDER

1. The allegations related to Section 504 of the Rehabilitation Act of 1973 and Title 42 United States Code section 1983 are hereby stricken from the amended complaint;
2. In all other respects, the amended complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).
3. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: December 14, 2011

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings

⁸ The District also seeks to dismiss Issue 2 because Student alleges that the District's actions resulted in a "hostile school environment" for Student. The District argues that it is beyond the jurisdiction of OAH to decide that issue. However, in reading Student's complaint, it appears that Issue 2 alleges a denial of FAPE, and the "hostile school environment" is just extra language within that FAPE allegation, not a separate issue.