

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. 2012010293

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On January 11, 2012 Student filed a Due Process Hearing Request¹ (complaint) naming the Pasadena Unified School District (District).

On January 26, 2012, District timely 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).

The complaint is deemed sufficient unless a party notifies the Office of Administrative Hearings and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements.³

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

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(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).

resolution of the problem to the extent known and available to the party at the time.⁴ 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.⁵

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁶ 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.⁷ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁸

DISCUSSION

The facts alleged in Student’s complaint are sufficient to put the District on notice of the issues forming the basis of the complaint. Student’s complaint identifies the issues and adequate related facts about the problem to permit District to respond to the complaint and participate in a resolution session and mediation. Therefore, Student’s statement of the claims is sufficient.

Student alleges that despite his eligibility for special education with a diagnosis of autism, and his sensory integration, attention and language difficulties (both receptive and expressive), District failed to appropriately assess his needs for behavior intervention, occupational therapy (OT), a sensory diet, language and speech (LAS) therapy or augmentative and alternative communication (AAC) in the 2009-2010, 2010-2011 and 2011-2012 school years. Student also alleges that District failed to properly document his progress

⁴ 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

⁵ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁶ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁷ *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.].

⁸ 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).

and present levels of performance during those school years, resulting in unmeasurable goals, inappropriate placement and related services, and procedural and substantive denials of a free and appropriate public education (FAPE). Student seeks compensatory education, provision of FAPE in the least restrictive environment, behavior intervention services, LAS therapy, AAC services, an independent functional behavior analysis, and independent OT and AAC evaluations.

The allegations in Student's complaint, taken as a whole, sufficiently apprise District of the nature of the problem, facts relating to the problem and a proposed resolution to the problem, meeting the requirements of 20 U.S.C. § 1415(b)(7)(A). The law does not require Student to detail every element of each IEP that he contends was created without sufficient information concerning his unique needs, or to state the exact amount of compensatory education or the prospective program that he requires. Whether or not District's alleged actions or inactions deprived Student of a FAPE that met Student's needs will be issues at the due process hearing, and the administrative law judge (ALJ) will ultimately decide those issues and determine the appropriate program and remedies. No further identification of problems or breakdown of proposed remedies is required.

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: January 30, 2012

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings