

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

HESPERIA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012010745

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT, AND ORDER ON
DISTRICT'S MOTION TO DISMISS

On January 26, 2012, unrepresented Parents, on behalf of Student, filed a Due Process Hearing Request¹ (complaint) naming the Hesperia Unified School District (District).

On February 10, 2012, District timely filed a response and a combined Notice of Insufficiency (NOI) and Motion to Dismiss for Lack of Jurisdiction.

NOI

District's NOI contends that the complaint fails to provide a sufficient factual description of the nature of the problem or the proposed resolutions, making it generally unclear whether Student is alleging that District failed to meet the procedural requirements of the IDEA or whether the placement and services provided failed to meet Student's unique individual needs. District also challenges the proposed remedies as unsupported by the factual allegations.

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

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).

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 Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et seq.) 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 (ALJ).⁷

Student’s complaint alleges that he is second grade, with “uncontrolled epilepsy, moderate mental retardation, ADHD combined type [and] Chared-Asthiosis.” The one-page complaint alleges that District is “in denial [of Student’s] disability and will not provide the proper services that [Student] needs per neuro doctors and neuro psych doctors” and has made inappropriate responses to Parent’s “request for special services.” The “outcome needed” is alleged to be the services recommended by the neuro doctors per “attached documentation,” including (1) specialized transportation, (2) smaller class size, and (3) a one-on-one aid during school hours “to watch and help [Student] physically and academically.”

Although Student’s complaint itself lacks detail, the few brief attached documents do not. Three short notes by Sarah Roddy, MD, at Pediatric Neurology of Loma Linda University Healthcare, dated October 19, 2011 through January 12, 2012, explain that

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).

Student suffers from a seizure disorder, and requires special transportation between home and school, a smaller classroom with “more 1 to 1 attention,” and to be monitored for seizure activity. An attached Confidential Neuropsychological Evaluation Summary by Kiti Freier Randall, Ph.D., of the Desert Mountain SELPA Children’s Center, based upon evaluations made in September and November 2011, notes that Student “was recently diagnosed with a seizure disorder which may be contributing to and/or exacerbating his cognitive deficits” and makes a series of recommendations for interventions and educational programming, including language services, modeling and repetitive teaching, behavioral intervention, a behavior plan with clear expectations for Student, less language-based instruction and more visual cues, avoidance of complex instructions, that Student’s seizures be closely monitored and managed, and that Student have an opportunity to engage in activities he enjoys not simply as part of reward and punishment.

Student’s attachments also include notes from the November 30, 2011, individualized education program (IEP) team meeting acknowledging that Parent stated that he did not want his son to attend school without an aide and wanted his son to be transported on a special bus, consistent with the recommendations of Dr. Roddy and Dr. Randall, but the IEP team responded with suggestions that Parents simply be provided with a “communication log” to monitor “if there are any seizures and how his physical being is at the time of the incidence” and that Student’s siblings (presumably also in elementary school) sit with Student on the bus (presumably to monitor him). Also included are notes from the January 23, 2012, IEP team meeting, documenting that Parents were “worried about the seizures,” that Student was having “anger issues” and being “trampled on the bus,” to which the team responded that it would “wait[] to hear from the doctor” prior to creating a transition plan to “be put into place upon [Student’s] return to school” regarding the bus ride.

Read as a whole, the attachments provide sufficient factual detail to support Student’s allegations that District has “not provide[d] the proper services” to address Student’s need to be continually monitored for seizure activity, or his need for one-on-one instruction and services as recommended by Drs. Roddy and Randall. The attached IEP team notes provide factual support to Student’s allegation that the IEP team failed to give due consideration to Parents’ concerns or to the neuropsychological information and educational recommendations presented by Parents, i.e., that District’s “responses to [Parents’] request for special services” were summarily “shot down,” which actions or inactions are sufficient to allege an infringement upon the Parents’ right to participate in the IEP process as well as a substantive denial of FAPE.

Student’s allegations are explained and supported by the factual information contained in the attachments to the complaint, and 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.

The proposed resolutions are also 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).) The recommendations of Drs. Roddy and Randall, attached to the complaint, factually support Student’s proposed remedies of special transportation, smaller class size and a one-on-one aide to monitor Student for seizure activity and provide additional academic and behavioral support. The proposed resolutions stated in Student’s complaint are well-defined, and Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time. Therefore, Student’s statement of proposed resolutions is sufficient.

Motion to Dismiss

District argues that the complaint seeks discipline of district personnel, which does not fall within OAH’s jurisdiction, and moves for dismissal of the entire complaint.

Parents have the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).) OAH has jurisdiction to hear due process claims arising under the IDEA. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029).

District mischaracterizes Student’s allegations. Student describes four District staff members (District nurse, school psychologist, home hospital teacher and District administrator of special services) as actors in the actions, or inactions, of the District that make the basis of Student’s complaint. Student does not request any type of discipline as a remedy or “outcome needed,” and so makes no claim outside of OAH jurisdiction. Accordingly, District’s motion to dismiss the complaint is denied.

ORDER

1. The complaint is deemed sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).
2. District’s motion to dismiss the complaint is denied.
3. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: February 13, 2012

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings