

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

OCEANSIDE UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2012041105

ORDER DENYING NOTICE OF  
INSUFFICIENCY

On April 24, 2012 Student filed a Due Process Hearing Request<sup>1</sup> (complaint) naming District. On April 30, 2012, District filed a notice of insufficiency (NOI) which was granted with leave to amend on April 30, 2012. On May 8, 2012, Student timely filed an amended complaint. On May 18, 2012, District timely filed a NOI as to the amended complaint. For the reasons discussed below, the complaint is sufficient and 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.<sup>2</sup> 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.<sup>3</sup> These requirements prevent vague and confusing complaints, and promote fairness by providing the

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<sup>1</sup> 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).

<sup>2</sup> 20 U.S.C. § 1415(b) & (c).

<sup>3</sup> 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.<sup>4</sup>

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”<sup>5</sup> 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.<sup>6</sup> Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.<sup>7</sup>

## DISCUSSION

Student’s amended complaint identifies the following issues constituting a denial of FAPE.

First, Student alleges in Issue 1(a) that District failed to assess Student in the area of speech and language. Student alleges that he was found eligible for special education services in October 2007 under the primary condition of specific learning disability (SLD). He alleges that, in his December 1, 2010 individualized education program (IEP), his expressive vocabulary was moderately below age expectations, his express language was delayed, his language skills interfered with language processing, and he performed below average in verbal memory. Although District argues that this issue is vague as to time, one can infer from the facts that the time frame alleged is from the December 1, 2010 IEP and after. Therefore, Issue 1(a) is sufficient to put District on notice of the issue and to prepare for and participate in a resolution session, mediation and due process hearing. If Student intended that a different time frame is involved, then he may amend the complaint to specifically identify a time frame other than from December 1, 2010 to the date of filing the amended complaint.

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<sup>4</sup> See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

<sup>5</sup> Sen. Rep. No. 108-185, *supra*, at p. 34.

<sup>6</sup> *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.].

<sup>7</sup> 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(b) alleges that, in Student's November 15, 2011 IEP, the IEP team noted that Student had extreme emotional reactions to challenges, that his peer relationships were strained, that he was observed to react with crying and arguing when he became frustrated and that his behavior allegedly impeded his learning. Student alleges that District failed to assess Student in the area of social/emotional/behavior. Although District argues that the time frame of this issue is vague, one can infer from the facts stated above that the claim encompasses from the November 15, 2011 IEP and after. Therefore, the issue is sufficient to put District on notice of the issue and to prepare for and participate in a resolution session, mediation and due process hearing. If Student intended this claim to encompass a time frame other than from November 15, 2011 to the time of filing of the amended complaint, he may amend his complaint to specify a time frame other than November 15, 2011 to the time of filing.

Issue 1(c) alleges that District noted in a manifestation determination hearing report dated February 9, 2012 that Student's ADHD had become more problematic to the degree that his attention delays were impacting his auditory processing and auditory memory delays. Student alleges that, despite that notation in the report, District failed to develop an assessment plan to determine the need for a change in eligibility relating to his ADHD, and to assess the impact of his ADHD on his education. Student further alleges that Student's November 15, 2011 IEP notes that he does not maintain an organized binder or backpack, which Student contends is further evidence of executive functioning deficits related to his ADHD. When read in context with the facts alleged in the complaint, it can be inferred that Issue 1(c) encompasses the time frame of November 15, 2011 to the time of filing. Therefore, Issue 1(c) is sufficient to put District on notice of the issue and to prepare for and participate in a resolution session, mediation and due process hearing. If Student intended this claim to encompass a time frame other than from November 15, 2011 to the time of filing of the amended complaint, he may amend his complaint to specify a time frame other than November 15, 2011 to the time of filing.

Issue 2 alleges that as of April 30, 2012, Student had been suspended a total of 19 cumulative days, and that the February 9, 2012 manifestation determination concluded that his behaviors were not a manifestation of his SLD. Student alleges that Student's behaviors and multiple suspensions should have put District on notice of the need to conduct a functional behavioral assessment (FBA) and that the multiple suspensions impeded his learning. In connection with Issue 3, discussed below, Student also alleges that on February 27, 2012, District implemented a BSP that was inadequate and inappropriate because it played to his weaknesses by relying on Student to engage in verbal consultation with staff in order to redirect his behavior, despite his recognized deficits in verbal skills. Based on these facts, Student claims in Issue 2(a) that District failed to a) conduct an FBA, and in 2(b) District failed to develop an effective behavior support plan (BSP) to address Student's unique needs associated with the behaviors giving rise to the suspensions. Although Student does not specifically identify a time frame in Issue 2, one can infer from reading the remainder of the factual allegations in the complaint that the claim encompasses the time frame of November 15, 2011 IEP and after. Issue 2 is sufficient to put District on notice of

the issue and prepare for and participate in a resolution session, mediation and due process hearing. If Student intended a different time frame he may amend the complaint.

Issue 3 has a heading that identifies a general denial of FAPE claim. However, Issue 3(a) specifically alleges that Student's IEP includes only three goals, namely social skills, behavioral skills and academics. Student alleges that the three goals are inappropriate and constitute a denial of FAPE based upon Student's unique needs, as discussed elsewhere in the complaint. As discussed above in connection with Issue 2(b), although Student has incorporated allegations pertaining to his BSP in this issue, the claim of an inappropriate BSP as a denial of FAPE is encompassed as Issue 2(b) and need not be restated here.

Issue 3(b) alleges that District notified Student's parents on April 27, 2012, that Parents must pick Student up from school because of concerns that other students might harm Student. Student also alleges that he was "terrified" to attend school at his then current placement. Parents, as a result, felt obligated to remove Student from his current placement and place him in another school where he would be safe. As such, Student claims that District denied Student a FAPE by failing to provide him with an appropriate placement where he would be safe. Issue 3(b) is sufficient to put District on notice of the issue and to prepare for and participate in a resolution session, mediation and due process hearing.

Student's complaint includes proposed resolutions which are sufficient.

#### 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: May 23, 2012

/s/

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ADRIENNE L. KRIKORIAN  
Administrative Law Judge  
Office of Administrative Hearings