

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MANZANITA ELEMENTARY SCHOOL
DISTRICT.

OAH CASE NO. 2012090766

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On September 24, 2012, Student filed a Due Process Hearing Request¹ (complaint) naming Manzanita Elementary School District (District) as the respondent.

On October 3, 2012, District 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).

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

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).

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

Student alleges that while he was attending a District school on an inter-district transfer, during the 2011-2012 school year, District failed in its child find duties. Specifically, Student alleges that District denied Student a FAPE by failing to assess him in all areas of suspected disability, including executive functioning, visual motor integration, occupational therapy, social emotional functioning, attention and processing, assistive technology and written expression. Student further alleges that District failed to find Student eligible for special education and related services, hold an IEP, failed to develop appropriate goals, and failed to offer appropriate placement and related services, including mental health services and counseling. Finally, although District provided some services, specifically a reading program and speech language therapy, it failed to properly document that these were special education related services being provided pursuant to an IEP. The complaint further alleges that for the 2012-2013 school year, Student was denied an inter-district transfer such

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).

that he is currently attending school in his district of residence, a decision the complaint seeks to have reversed.⁸

The facts alleged in Student's complaint are sufficient to put 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.

District's NOI contends that Student did not request a special education assessment nor provide consent to same, and that this is a required element of his claim that his complaint fails to allege. This failure to allege a required element, according to District's NOI, should render the complaint insufficient. However, District's contention seeks a ruling on the merits at the pleading stage. Here, the complaint provides an awareness and understanding of the issues forming the basis of the complaint. This is sufficient, as liberally construed in light of the broad remedial purposes of the IDEA and the informality of the due process hearings it authorizes.

As resolutions, Student seeks independent educational evaluations, convening of an IEP meeting at which District shall offer appropriate goals, reimbursements for private services, and compensatory education. District's NOI argues that it cannot be forced to issue an inter-district transfer for the current school year, nor to assess or convene an IEP meeting for a student outside its boundaries. However, a complaint is only 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).) Student has met the statutorily required standard of stating a resolution to the extent known and available at the time. Accordingly, because the complaint is sufficient to put District on notice of the claims and requested relief, the NOI is denied. All dates currently set in this matter are confirmed.

ORDER

1. The complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

⁸ Student's complaint also alleges violations of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), which allegations are addressed in a Motion to Dismiss by District. The Motion to Dismiss will be dealt with by separate order.

2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: October 05, 2012

/s/

JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings