

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MANHATTAN BEACH UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2012110640

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On November 20, 2012, Student filed a due process hearing request¹ (complaint) naming the Manhattan Beach Unified School District (District).

On December 12, 2012, District filed a timely notice of insufficiency (NOI) as to Student's complaint.²

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.³ 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.⁴ 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 As discussed in the December 5, 2012 order on District's motion to reset timelines, District received a copy of Student's complaint on November 29, 2012.

³ 20 U.S.C. § 1415(b) & (c).

⁴ 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.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 Individuals with Disabilities Education Act (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, which seeks a hearing only, 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.

Student’s complaint alleges that Student, a young man in high school, has difficulty reading, and that privately funded assessments have found Student suffers from visual processing, visual spatial processing, sensory processing and/or motor processing deficits. However, despite repeated requests by Student’s parents that Student be assessed for special education, District has refused because Student is “successful at school.” The complaint is not broken down into separate claims, but alleges that Student requires an individualized education program (IEP) with at least three specific accommodations to his educational program to achieve academic success, including (1) additional time to take exams, with breaks during exams to rest his eyes, (2) a reader and note-taker, and (3) a seat away from the

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).

classroom white board, large print books and papers, audio recordings of his textbooks and teacher notes in advance of class.

District's NOI contends that Student, by failing to reference the IDEA, fails to allege facts sufficient to state a claim under the IDEA.

The IDEA does not require that students with disabilities cite to specific provisions of federal or state law when drafting their due process hearing requests, or that they use a particular language or vocabulary such as references to a "free appropriate public education" "access to the general education curriculum." Here, Student alleges in plain English that he has processing deficits that affect his ability to learn, and that he should be assessed for special education eligibility and provided with an IEP with accommodations to assist him to understand what is taught and keep up with his class. These allegations state sufficient facts to describe problems with Student's identification as a student with a disability, assessment to determine his areas of need, and the provision of accommodations necessary for him to access the curriculum. Student also proposes resolutions to the extent known to him when the complaint was filed. Therefore, Student's complaint is sufficiently pled to put District on notice as to the basis of Student's claims.

ORDER

1. Student's complaint is sufficiently pled under Title 20 United States Code section 1415(b)(7)(A)(ii).
2. The prehearing conference, and hearing dates in this matter are confirmed.

Dated: December 13, 2012

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings