

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

IRVINE UNIFIED SCHOOL DISTRICT.

OAH Case No. 2016020233

ORDER DENYING NOTICE OF
INSUFFICIENCY

On February 2, 2016, Student filed a Due Process Hearing Request¹ (complaint) with the Office of Administrative Hearings naming Irvine Unified School District. On February 5, 2016, District timely filed a Notice of Insufficiency (NOI) as to Student’s complaint. For the reasons discussed below, 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. (20 U.S.C. § 1415(b) & (c).) 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 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. (20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).) 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. (See H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.)

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.” (Sen. Rep. No. 108-185, *supra*, at p. 34.) The pleading requirements should be liberally construed in light of the

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 U.S.C. section 1415(b)(7)(A).

broad remedial purposes of the IDEA and the relative informality of the due process hearings it authorizes. (*Alexandra R. ex rel. Burke v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, CIV. 06-CV-0215-JL) 2009 WL 2957991[nonpub. opn.]; *Escambia County Bd. 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, 8:04CV2657T24EAJ) 2005 WL 2850076 [nonpub. opn.]; but cf. *M.S.-G v. Lenape Regional High School Dist. Bd. of Educ.* (3d Cir. 2009) 306 Fed.Appx. 772, 775 [nonpub. opn.].) Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge. (*Assistance to States for the Educ. of Children with Disabilities & Preschool Grants for Children with Disabilities* (Aug. 14, 2006) 71 FR 46,540-46541, 46699.)

DISCUSSION AND ORDER

Student's complaint alleges during the 2013-2014 school year, District began fading out his one-to-one behavior aide, resulting in an increase in maladaptive behaviors by the summer of 2015 when the aide was removed from his educational program. In December 2015, District conducted a functional analysis assessment and did not change Student's educational program. Student has allegedly regressed academically and emotionally as a result, and is anxious about attending school. Student's single stated issue alleges District denied him a FAPE by failing to provide an appropriate educational program that meets all of Student's unique needs.

District argues Student's issue does not specifically identify the time period at issue, or state whether needs other than behaviors are part of Student's claim. However, the proposed resolutions add clarity. Student seeks placement in a non-public school, a full time one-to-one adult aide support, a behavior intervention plan, compensatory education services, and reimbursement for privately funded educational services.

Based on the facts and proposed resolutions, the single issue in Student's case is:

"Did District deny Student a FAPE during the two-year statutory period by failing to provide appropriate related services to address Student's unique needs in the area of behavior?"

If Student intended to include additional or different issues in his complaint, he may move for leave to amend his complaint.

District challenges the factual support for Student's proposed remedy of a non-public school. 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).) Student pled that because of his anxiety about going to school, Parents are seeking, among other remedies, placement in a non-public school. Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

The complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii). All mediation, prehearing conference, and hearing dates in this matter are confirmed.

IT IS SO ORDERED.

DATE: February 9, 2016

DocuSigned by:

Adrienne L. Krikorian

ADRIENNE L. KRIKORIAN

Administrative Law Judge

Office of Administrative Hearings