

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

ROSEDALE UNION ELEMENTARY
SCHOOL DIST.

OAH CASE NO. 2010020271

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On February 9, 2010 Student filed a Due Process Hearing Request naming Rosedale Union Elementary School District (District) as the respondent. Student alleged: 1) That he was denied a FAPE because the District's placement offer on February 5, 2010 was not appropriate because it was an SDC and was offered with inadequate ABA aide support; and 2) That Student was denied a FAPE because the February 5, 2010 placement offer was not in the least restrictive environment. As proposed resolutions, Student seeks a less restrictive placement, full-time ABA aide support and up to 500 hours of compensatory ABA therapy. On February 23, 2010 District timely filed a Notice of Insufficiency (NOI). As discussed below, the complaint is sufficient.

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.¹ 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.² 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.³

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint."⁴ The pleading

¹ 20 U.S.C. § 1415(b) & (c).

² 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV)

³ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁴ Sen. Rep. No. 108-185, *supra*, at p. 34.

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.⁵ Whether the complaint is sufficient is a matter within the sound discretion of the ALJ.⁶

Here, Student has clearly alleged two issues for hearing, both of which relate to the District's February 5, 2010 offer of placement. Student's due process hearing request includes general factual allegations about his unique needs and his placement history and contains clearly articulated proposed resolutions. Contrary to District's position, the IDEA does not require that the proposed resolutions directly relate to the alleged FAPE violations, such that the request for compensatory ABA services does not render the due process hearing request insufficient.

ORDER

1. The complaint is sufficient.
2. All dates in this matter remain on calendar.

Dated: February 25, 2010

/s/

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings

⁵ *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.].

⁶ 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).