

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENTS on behalf of STUDENT,

vs.

SAN DIEGO CITY UNIFIED SCHOOL
DISTRICT,

OAH CASE NO. 2010020276
(primary)

PARENTS on behalf of STUDENT,

vs.

SAN DIEGO CITY UNIFIED SCHOOL
DISTRICT,

OAH CASE NO. 2010011273
(secondary)

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On February 04, 2010, Parents on behalf of Student filed a Due Process Hearing Request¹ (primary complaint), OAH case number 2010020276, naming San Diego Unified School District (District) as respondent.

On March 2, 2010, OAH issued an Order granting District's Motion to Consolidate this matter with a previously filed matter of the same title, OAH case number 2010011273 (secondary complaint). On March 29, 2010, OAH granted Student's request for a continuance in the consolidated matters, setting mediation for 05/10/2010, at 9:30 a.m., the prehearing conference for 05/17/2010, at 10:00 a.m., and the due process hearing for 05/24-25/2010.

District contends that it filed and served a Motion to Dismiss Complaint Due to Deficiency in the Pleading and Failure to State Claims for Which OAH Can Grant Relief [Notice of Insufficiency] (NOI) as to the primary complaint, on February 5, 2010. District provided a copy of the fax receipt, evidencing the NOI was faxed to OAH on February 5, 2010. OAH does not have a record of having received the NOI and therefore did not process the motion.

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).

Proof of service indicates the NOI was served upon Parents by mail on February 5, 2010. Student has not filed any opposition to the NOI, which concerns the primary complaint only.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).

The complaint is deemed sufficient unless a party notifies the Office of Administrative Hearings and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements.⁴

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.⁵ 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.⁶

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁷ 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.⁸ Whether the complaint is sufficient is a matter within the sound discretion of the ALJ.⁹

DISCUSSION

² District also filed an NOI for the secondary complaint, which was ruled upon on February 10, 2010.

³ 20 U.S.C. § 1415(b) & (c).

⁴ 20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).

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

⁶ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁷ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁸ *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.].

⁹ 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).

No opposition or contrary evidence has been submitted in response to District's assertion that it timely filed and served its NOI to the primary complaint on February 5, 2010, which was within the statutorily prescribed time period. The proof of service, under penalty of perjury, and the fax receipt establish the District's filing. Accordingly, the NOI to the primary complaint is deemed timely.

Student's complaint alleges nine (9) claims in the complaint, some of which are sufficient and some which are insufficient. The issues are discussed below.

Issue One informs District that the IEP behavior plan is not being followed by Student's teacher and the solution is to follow the plan. Issue One is sufficient.

Issue Two states that Parents have been paying for Student's ADHD therapy and medication and requests that the school provide the therapy and reimburse Parents for the medication. Issue Two does not indicate how the ADHD therapy and medication is related to a FAPE that comes within OAH jurisdiction. Issue Two is insufficient.

Issue Three reads that Student wants an occupational therapy (OT) IEE because the OT assessment was conducted while Student was on his medication. The solution is to notify Parents of the evaluation early enough so Parents can prepare Student for the OT evaluation. This issue fails to indicate: Parents disagreed with the OT assessment; Parents asked for an IEE; and District denied Parent's IEE request. As presently constructed, Issue Three merely requests an IEE. Due Process is not the proper means of asking for an IEE. Issue Three is insufficient.

Issue Four asserts that Parents put student in karate class for mental and physical therapy because the OT evaluation was taking a long time. The solution is for the District to reimburse Parents the cost associated with the karate classes. The issue does not say if the OT evaluation was requested, if it is presently ongoing, or how the OT is related to Student's FAPE. Issue Four is insufficient.

Issue Five states Parents put Student in Boy Scouts for socialization, which the District will not provide as part of Students behavioral plan. Parents seek reimbursement for Boy Scouts' registration. The problem is that the Student's behavioral plan does not include socialization and the solution was to enroll Student in Boy Scouts, for which Parents' seek reimbursement of expenses. Issue Five is sufficient.

Issue Six asserts that the District will not provide an auditory processing evaluation, which Parents contend is needed to fully evaluate Student. Though not specifically stated, the assertion adequately indicates that such evaluation was requested. The solution is to conduct the evaluation. Issue Six is sufficient.

Issue Seven seems to say the Parents provided a neuropsychological evaluation to the school and then asked for another "so we can implement it in the I.E.P." The solution is to provide the exam at no cost to the family. Issue Seven is unclear and fails to provide

sufficient information to enable the District to prepare for the hearing and participate in resolution sessions and mediation. Issue Seven is insufficient.

Issue Eight claims Student should be in “the seminar classes,” which are not in anyway defined or otherwise described. District states that they are GATE (gifted and talented) classes. District is correct that placement in GATE classes is not within OAH jurisdiction. The issue lacks clarity and does not provide an understandable description of the problem. Issue Eight is insufficient.

Issue Nine states Parents would like to reduce pencil and paper tasks for Student and therefore requests an assistive technology assessment as a solution. The issue fails to indicate if Parents asked the District or that District disagrees with the request. The issue does not state how this is related to Student’s denial of FAPE. The request should be made to the District or IEP team, not in a due process. Issue Nine is insufficient.

ORDER

1. Issues One, Five, and Six are sufficient.

2. Issues Two, Three, Four, Seven, Eight, and Nine are insufficient.

3. Student shall be permitted to file an amended complaint not later than 14 days from the date of this order.¹⁰ Parents are advised that under Education Code section 56505, a parent who is not represented by an attorney may request that the Office of Administrative Hearings provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. Parents are encouraged to contact OAH for assistance in amending their due process hearing request.

4. If Student does not file an amended complaint within 14 days, the hearing shall proceed on the continued dates pursuant to the March 29, 2010 order on Issues One, Five, and Six in Case No. 2010020276 and on Issues Three, Four, Five and Six, and Issue One (with the exception of the allegations about back problems) in Case No. 2010011273.

Dated: March 30, 2010

/s/

CLIFFORD H WOOSLEY
Administrative Law Judge
Office of Administrative Hearings

¹⁰ The filing of an amended complaint will restart the applicable timelines for a due process hearing.