

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

DAVIS JOINT UNIFIED SCHOOL
DISTRICT AND YOLO COUNTY
MENTAL HEALTH

OAH CASE NO. 2010050199

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

Student filed an Amended Due Process Hearing Request¹ (complaint) on June 7, 2010 because her first complaint had been found insufficient. On June 22, 2010, District filed a Notice of Insufficiency (NOI) as to the amended complaint. As discussed below, the complaint is sufficient only as to the issues as they are identified by this Order. If Student wishes to have any other issues adjudicated at the due process hearing, she must seek leave to amend the complaint or file a new, separate due process hearing request.

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 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 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

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)

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.

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 ALJ.⁷

DISCUSSION

Here, the complaint contains a recitation of Student's recent educational and mental health history. Following the background allegations, Student has alleged three issues for hearing. District is correct that the "issues" are not a model of clarity and contain numerous recitations of facts from the background allegations that do not appear connected to the issues alleged and/or are repetitive. However, the ALJ was able to determine a limited number of "problems" alleged within each issue that are sufficient to provide District with notice of the issues for hearing. Read in conjunction with the background facts, the ALJ was able to determine that six issues have been alleged with sufficient specificity to meet the notice requirements to District.

Issue One alleges that from May 5, 2008 through the date of filing the first complaint, Student was denied a free appropriate public education (FAPE) because: 1) related services were not provided to teach Student the skills she needed to achieve her IEP goals; 2) Student's placement at Martin Luther King at the October 22, 2009 IEP was not appropriate. No other issues were clearly alleged in Issue One.

Issue Two contains numerous allegations that appear to repeat the Issue One allegations regarding the failure to provide an appropriate placement and related services. However, the ALJ was able to determine that Issue Two contained some additional "problems." Issue Two alleges that from May 5, 2008 through the date of filing the first complaint, Student was denied a FAPE because: 1) from May of 2008 through December of 2008 Student did not receive mental health services through AB 3632; and 2) After February 2, 2009, parent did not receive progress reports on IEP goals. No other issues were clearly alleged in Issue Two.

Issue Three alleges that from May 5, 2008 through the date of filing the first complaint, Student was denied a FAPE because: 1) Student's need for behavior intervention services was not assessed; 2) a behavior intervention program was not implemented. No other issues were clearly alleged in Issue Three.

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).

As proposed resolutions, Student seeks: an out-of-state residential placement; parental visits to same; compensatory education consisting of a minimum of 200 hours of 1:1 instruction; development of a new transition plan; independent assessments consisting of a functional analysis assessment, an assistive technology assessment, and a vocational assessment. Although the proposed resolutions do not necessarily correspond exactly to the issues set forth above, there is no requirement that they do so. Student has adequately put the District on notice of what she seeks to resolve the issues raised.

Student has met the IDEA notice requirements only as to the six issues identified by the ALJ above.

ORDER

1. The complaint is sufficient under section 1415(b)(7)(A)(ii) only as to the following six issues, which have been re-ordered in chronological order for clarity:

Whether Student was denied a FAPE during the period of May 5, 2008 through May 5, 2010, the date of filing the first complaint, because:

- a) Student's need for behavior intervention services was not assessed;
- b) a behavior intervention program should have been provided;
- c) from May of 2008 through December of 2008 Student did not receive mental health services through AB 3632;
- d) related services were not provided to teach Student the skills she needed to achieve her IEP goals;
- e) after February 2, 2009, parent did not receive progress reports on IEP goals, and;
- f) Student's placement at Martin Luther King at the October 22, 2009 IEP was not appropriate.

2. Student may only proceed to hearing on the issues identified above because the ALJ was unable to discern any other issues for hearing in the complaint. Should Student wish to proceed on any other issues she must either seek leave to amend the complaint or must file a new request for due process hearing.

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

Dated: June 23, 2010

/s/

RICHARD T. BREEN
Administrative Law Judge

Office of Administrative Hearings