

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

INSIGHT SCHOOL OF CALIFORNIA –
NORTH BAY & WINDSOR UNIFIED
SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2010060742

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On June 15, 2010, Insight School of California – North Bay, and Windsor Unified School District (together District) filed a Due Process Hearing Request¹ (complaint) naming Student as the respondent. The complaint alleges one issue: Whether District offered Student a FAPE in the IEP dated May 20, 2010. As a resolution, District seeks a declaration from OAH that it has offered Student a FAPE. The complaint is supported by related factual allegations showing that there has been a dispute regarding assessment of Student, that Student has not been accessing District services, and that because District is required to offer a FAPE, District is seeking a declaration that it has met its obligation. On June 23, 2010, Student 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.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

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). All subsequent statutory references are to title 20, United States Code.

² § 1415(b) & (c).

³ § 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.

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁵ 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.⁶ Whether the complaint is sufficient is a matter within the sound discretion of the ALJ.⁷

Here, the District’s complaint meets the above notice requirements in all respects. The complaint clearly alleges that District is seeking a declaration that it offered Student a FAPE in a particular IEP and is supported by facts relating to the problem. District’s complaint thus meets the notice requirements of the IDEA. Student’s NOI is without merit.

ORDER

1. The complaint is sufficient.
2. All dates are confirmed.

Dated: June 24, 2010

/s/

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings

⁵ Sen. Rep. No. 108-185, *supra*, at p. 34.

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).