

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PASADENA UNIFIED SCHOOL
DISTRICT & LOS ANGELES COUNTY
OFFICE OF EDUCATION.

OAH CASE NO. 2010101058

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On October 25, 2010, Student filed a Due Process Hearing Request¹ (complaint) naming Pasadena Unified School District (District) and the Los Angeles County Office of Education as respondents. On November 9, 2010, District filed a Notice of Insufficiency (NOI). As discussed below, the complaint is sufficient as to District.

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 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.³ These requirements prevent vague and confusing complaints, and promote fairness by providing the

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).

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 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 Administrative Law Judge.⁷

DISCUSSION

The complaint alleged facts detailing Student’s recent educational history, enrollment in the District, and District’s provision of assessments and education. As to District, Student alleged that he was denied a FAPE because: 1) District failed to timely revise Student’s IEP, conduct triennial assessments, obtain Student’s records from his prior District, and appoint an educational surrogate; 2) the February 24, 2010 IEP contained inaccurate PLOPs and improper writing goals; 3) DIS counseling was not provided, District did not make a timely AB 3632 referral, and a positive behavioral support plan should have been developed; 4) Student’s placement was changed to general education without an IEP meeting and appropriate services and supports; 5) District’s psychoeducational assessment was inappropriate and District failed to properly respond to Student’s IEE request. All allegations were supported by related facts and Student has asked for proposed resolutions of an independent assessment, compensatory counseling, and tutoring (both as part of his IEP and a compensatory amount). Such a complaint is sufficient as to District.

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.

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).

ORDER

1. The complaint is sufficient as to Pasadena Unified School District under Title 20 United States Code section 1415(b)(7)(A)(ii).
2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: November 10, 2010

/s/

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings