

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PALMDALE SCHOOL DISTRICT.

OAH CASE NO. 2011031087

ORDER OF DETERMINATION OF
SUFFICIENCY OF SECOND
AMENDED DUE PROCESS
COMPLAINT

On March 22, 2011, Student filed a Due Process Hearing Request¹ (complaint) naming Palmdale School District (District). On March 23, 2011, District filed a notice of insufficiency (NOI) as to the complaint. On March 29, 2011, the Office of Administrative Hearings (OAH) issued an order finding Student's initial due process hearing request (complaint) to be insufficient.

On March 30, 2011, Student filed a notice of amended complaint (first amended complaint). On April 1, 2011, District filed a NOI as to Student's first amended complaint. On April 6, 2011, OAH issued an order finding Student's first amended complaint to be insufficient

On April 11, 2011, Student filed a notice of third supplemental amended complaint (second amended complaint). On April 12, 2011, District filed a NOI as to the second amended complaint. On April 14, 2011, Student filed opposition to the NOI.

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

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).

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 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 sole problem in the second amended complaint alleges District did not provide Student a FAPE for the 2010-2011 school year, beginning in the March 9, 2011 individualized educational program (IEP), because District failed to offer supplemental educational services in the form of individualized academic tutoring in mathematics. Student contends that he is qualified for special education services under the disability category of specific learning disability and that he has been diagnosed with attention deficit hyperactivity disorder (ADHD). Student further contends that he requires supplemental educational services as a result of his disability because he has a deficit in mathematics, has difficulty understanding the math problems, and gets frustrated. He contends that his ADHD impacts and interferes with his performance in mathematics. Student proposes resolutions which

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.

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).

include providing two hours per week of one-to-one mathematics tutoring to the date of the annual IEP.

The facts alleged in Student's second amended complaint are sufficient to put the District on notice of the issues forming the basis of the complaint. The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint." Student's second amended complaint meets the statutory requirements for pleading because the second amended complaint identifies the issue and adequate related facts about the problem to permit District to respond to the second amended complaint and participate in a resolution session and mediation.

A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (20 U.S.C. §1415(b)(7)(A)(ii)(IV).) The proposed resolution stated in Student's second amended complaint is sufficiently defined. Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

ORDER

1. The second amended complaint is sufficient 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: April 19, 2011

/s/

STELLA OWENS-MURRELL
Administrative Law Judge
Office of Administrative Hearings