

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

GUARDIAN ON BEHALF OF STUDENT,

v.

PASADENA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011040074

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT AND ORDER STRIKING
ISSUE FOUR AS BEYOND THE
JURISDICTION OF OAH

On April 15, 2011, the Office of Administrative Hearings (OAH) found that issue one of Student's due process complaint, filed on March 30, 2011, was insufficient because Student failed to state when the Pasadena Unified School District (District) received a copy of an assessment report regarding Student prepared upon the request of the Department of Children and Family Services. Student filed an amended complaint on April 15, 2011. On April 29, 2011, the District timely filed a Notice of Insufficiency as to Student's amended complaint. The District contends that Student has failed to adequately cure the deficiencies of issue one of his complaint. The District also moves to strike issue four of Student's amended complaint, contending that it is beyond OAH's jurisdiction.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.¹ 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.² These requirements prevent vague and confusing complaints, and promote fairness by providing the

¹ 20 U.S.C. § 1415(b) & (c).

² 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.³

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁴ 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.⁵ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁶

DISCUSSION

The District argues that issue one is still insufficient because Student fails to clearly state when the District received a copy of the assessment report that allegedly gave notice to the District of Student’s unique needs. The District points out that Student states in his factual background that the District received a copy of the assessment report in December 2009 but then contradicts this statement by alleging in issue one that the report was provided to the District about the time it was created, which Student earlier stated was approximately September 2007.

The District is now aware that Student contends that the District received the report as early as September 2007. Whether this is correct or whether the District did not receive the report until December 2009 is a factual question which will be Student’s burden to prove at hearing. For purposes of an NOI, the District is now on notice of what report is at issue and when Student contends the District received it. This is sufficient information to put the District on notice of the issues forming the basis of the complaint. Student’s complaint identifies the issues and adequate related facts about the problem to permit the District to

³ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁴ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁵ *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.].

⁶ 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).

respond to the complaint, participate in a resolution session and mediation, and defend the allegations at hearing if necessary. Therefore, Student's issue one is sufficient.

MOTION TO STRIKE

In issue four, Student alleges that the District violated his rights and those of his guardian under the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and state civil rights statutes. OAH does not have jurisdiction to hear cases brought under any of these statutes. The District's motion to strike Student's issue four is therefore granted.

ORDER

1. The complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).
2. The District's motion to strike issue four of Student's amended complaint is granted.
3. This matter will proceed as to Student's issues one, two, and three. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: May 2, 2011

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings