

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PASADENA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011050665

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On May 12, 2011, Student filed a Due Process Hearing Request¹ (complaint) naming Pasadena Unified School District (District) as the respondent. On May 26, 2011, District timely filed a Notice of Insufficiency (NOI). As discussed below, the complaint is sufficient.

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

Here, Student alleges that District denied Student a FAPE on two grounds: 1) That District was aware of facts that should have caused it to assess Student for special education eligibility based on Student’s poor health and academic performance; and 2) That District failed to assess Student in response to Parent’s express requests for assessment. Student alleges that he is entitled to compensatory education as a result.

The issues alleged are supported by relevant related facts detailing Student’s educational history. In particular, the facts alleged detail the various interventions short of special education that the District attempted, as well as facts demonstrating that District was aware of Student’s academic struggles and health-related absences. Student alleges facts that could support possible special education eligibility on the ground Student’s asthma impacted his education or on the ground of a learning disability. The detailed factual recitation is more than sufficient to put the District on notice of the basis for Student’s allegations.

Finally, the complaint clearly sets out proposed resolutions of assessments, an IEP team meeting to discuss eligibility and compensatory education. A complaint is required to

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 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).) Contrary to the District's NOI, there is no requirement that each proposed resolution be supported by a detailed factual nexus to each allegation. Here, the proposed resolutions are more than adequate to permit the District to participate in a resolution session, mediation, or hearing.

ORDER

1. The 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: May 27, 2011

/s/

RICHARD T. BREEN
Presiding Administrative Law Judge (acting)
Office of Administrative Hearings