

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TEMECULA VALLEY UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2011060977

ORDER DETERMINING
SUFFICIENCY OF COMPLAINT

On June 21, 2011 Student filed a first amended request for due process¹ (complaint) naming District. On July 23, 2011, District timely filed a Notice of Insufficiency (NOI) as to Student's complaint.

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 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).

² 20 U.S.C. § 1415(b) & (c).

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.

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

Student’s amended complaint contains eight issues for hearing, and includes proposed resolutions. District’s NOI challenges only issues 4 and 8.

In Issue 4, Student alleges that the District failed to assess her in all areas of suspected disability. In support of this allegation, Student alleges that District failed to assess her for special education eligibility during the 2009-10 school year, that Parents requested assessments from District beginning in September 2010, that District initially refused to assess her, that Parent signed an assessment plan offered by District on December 6, 2010, that District did not begin assessing Student until January 21, 2011, and that “some areas” of suspected need were never assessed by District. Student alleges that District did not assess Student for possible auditory processing disorder, and that assessments in the areas of speech-language and occupational therapy were not completed until May 25, 2011. The complaint only references testing related to three suspected areas of disability: central auditory processing disorder, speech and language, and occupational therapy. As to those areas, the facts relate only to the 2010-11 school year. The allegations are sufficient for District to prepare for a resolution session and mediation, but only as to the areas of auditory processing disorder, speech and language, and occupational therapy. However, if Student contends that other areas of need should have been assessed in the 2009-10 and 2010-11 school years, then Student must amend her complaint to state sufficient facts to support additional claims.

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).

In Issue 8, Student alleges that during the 2009-10 and part of the 2010-11 school years, District failed to timely offer her an appropriate special education placement. In support of this allegation, Student alleges that until the February 15, 2011, District failed to find her eligible for special education and did not offer her a special education placement. At the February 15, 2011 individualized education plan (IEP) team meeting, Student alleges that District found her eligible for special education in an unspecified eligibility category and offered “special education placement.” District renewed its finding of eligibility and offer of special education placement at her April 2011 and May 20, 2011 IEP meetings. These allegations are sufficiently pleaded to put District on notice of Student’s claims and to prepare for a resolution session and mediation.

ORDER

1. Issues 1, 2, 3, 5, 6, 7 and 8 are sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).
2. Issue 4 as it relates to the 2009-10 and 2010-11 school years is limited to the allegations that District denied Student FAPE because it failed to timely assess Student in the areas of occupational therapy, speech and language, and central auditory processing.
3. The hearing will proceed on all issues as alleged in the first amended complaint except for Issue 4, which shall be limited as stated in this Order. If Student intended to allege that District failed to assess Student for suspected needs in areas other than those stated in this Order, Student shall have 14 days from the date of this Order to amend the complaint pursuant to section 1415(c)(2)(E)(i). The filing of an amendment shall result in the resetting of all timelines under section 1415(c)(2)(E)(ii).
4. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: July 25, 2011

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings