

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.
BERKELEY UNIFIED SCHOOL
DISTRICT & OAKLAND UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2011080343

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On August 9, 2011 Student filed a Due Process Hearing Request¹ (complaint) naming Berkeley Unified School District (BUSD) and Oakland Unified School Districts (OUSD) as respondents.

On August 23, 2011, BUSD filed a Notice of Insufficiency (NOI) as to Student's complaint. BUSD contends the complaint is insufficient because Student admits his parents did not reside in the jurisdictional boundaries of BUSD at any time relevant to the complaint, there are insufficient facts establishing BUSD denied Student a FAPE, and the proposed resolutions do not relate specifically to BUSD. BUSD did not file a motion to dismiss. Accordingly the sole matter addressed in this order pertains to the sufficiency of the pleading.

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).

The complaint is deemed sufficient unless a party notifies the Office of Administrative Hearings and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements.³

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(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).

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.⁴ 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.⁵

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁶ 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.⁷ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁸

DISCUSSION

The complaint contains a statement of facts which indicate that Student attended a private school within the boundaries of the BUSD for the 2009-2010 school year. The complaint alleges in Legal Issue Number One that BUSD denied Student a FAPE in the 2009-2010 school year and extended school year by (1) failing to fulfill its “Child Find” obligations to seek and serve Students who are attending private schools within its jurisdictional boundaries; (2) failing to provide a timely and appropriate assessment plan to

⁴ 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

⁵ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁶ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁷ *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.].

⁸ 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).

determine eligibility for special education services; (3) failing to timely conduct the assessments; (4) failing to convene an Individualized Education Plan (IEP) meeting to discuss eligibility and offer an individual service plan or facilitate an IEP offer through Student's home school district; (5) failing to maintain Student's educational records concerning identification, evaluation and placement of a child; and (6) failing to provide the parents an opportunity to examine all records relating to identification, evaluation and placement of a child.

The facts alleged in Student's complaint are sufficient to put BUSD 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 BUSD to respond to the 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).) Here, Student lists five proposed resolutions that are clearly articulate what Student wants to resolve the identified problems. The fact that two school districts were named as respondents can only be interpreted as showing that Student wants the same resolutions from both named districts. The complaint is sufficient in all respects.

ORDER

1. Student's complaint as to BUSD is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

2. The matter shall proceed as scheduled.

Dated: August 26, 2011

/s/

STELLA OWENS-MURRELL
Administrative Law Judge
Office of Administrative Hearings