

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MARIN COUNTY OFFICE OF  
EDUCATION.

OAH CASE NO. 2011110327

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On November 7, 2011 Parents on behalf of Student (Student) filed a Due Process Hearing Request<sup>1</sup> (complaint) naming the Dixie Unified School District (Dixie) and the Marin County Office of Education (MCOE) as respondents.

On November 22, 2011, MCOE filed a Notice of Insufficiency (NOI) as to Student's complaint. MCOE contended that the complaint fails to allege any facts as to MCOE and is thus insufficient. On November 22, 2011, the Office of Administrative Hearings (OAH) issued an order which determined that the complaint was not sufficient as to MCOE in that there were no factual allegations made as to MCOE.

On December 5, 2011, Student filed an amended complaint which related solely to MCOE. Student sought to clarify how the issues raised in the complaint were applicable to MCOE. The amended complaint omitted any reference to Dixie, failed to state any claims, and omitted any proposed resolutions. On December 19, 2011, MCOE filed a NOI as to the amended complaint. On December 20, 2011, Student filed a response.

On December 20, 2011, OAH ruled that Student's amended complaint was insufficient as it failed to contain a description of the problem(s), facts related to the problem(s), nor any proposed resolutions. Student was allowed time to further amend the complaint.

On December 28, 2011 Student filed a second amended complaint naming Dixie and the MCOE. On January 11, 2012, MCOE filed a NOI as to MCOE. Student opposed MCOE's NOI on January 12, 2012.

---

<sup>1</sup> 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).

## APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”<sup>5</sup> 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.<sup>6</sup> Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.<sup>7</sup>

---

<sup>2</sup> 20 U.S.C. § 1415(b) & (c).

<sup>3</sup> 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

<sup>4</sup> See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

<sup>5</sup> Sen. Rep. No. 108-185, *supra*, at p. 34.

<sup>6</sup> *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.].

<sup>7</sup> 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).

A due process hearing extends to “the public agency involved in any decisions regarding the pupil.” (Ed. Code § 56501(a).) A public agency includes a school district, county office of education, special education local plan area, a nonprofit charter school...or any other public agency under the auspices of the state or any political subdivisions of the state providing special education or related services to an individual with exceptional needs.” (Ed. Code §§ 56500, 56028.5.)

## DISCUSSION

MCOE contends that the second amended complaint is insufficient as to MCOE on the ground that MCOE does not have an obligation to provide special education or related services to Student, and as such, can not be named as a respondent. MCOE provides a declaration to clarify its relationship to Dixie.

Student alleges that MCOE operates and provides pupils with disabilities within Dixie (and throughout Marin) more than 30 special day classes, and several Resource Specialist Programs throughout the District, which are in addition to the programs provided by Dixie. Student alleges that MCOE is not the primary provider of Student’s services, but is mandated to provide programs to pupils, including Student, within the county, which includes Dixie.

In particular, Student alleges that MCOE participated in the assessment of Student and failed to appropriately assess Student by failing to review all mental health records and, as a result, predetermining that Student did not qualify as emotionally disturbed. Student further alleges that MCOE failed to offer a FAPE at the IEP team meeting, including failing to provide home instruction, and failing to consider the range of programs and services available in the MCOE. Student provides a range of proposed resolutions including, eligibility as emotionally disturbed, home support services, and a dedicated one-on-one aide.

As stated above, the second amended complaint contains a description of the problem(s), facts related to the problem(s), and proposed resolutions. MCOE’s declaration is inappropriate for an NOI. As set forth above, an NOI is limited to omissions on the face of the pleadings, not evidence in the form of declarations. The facts alleged in Student’s complaint are sufficient to put the MCOE on notice of the issues forming the basis of the complaint. Student’s second amended complaint identifies the issues and adequate related facts about the problem to permit the MCOE to respond to the complaint and participate in mediation and the hearing.

As such, the second amended complaint is sufficient to meet the requirements of Title 20 United States Code section 1415(b)(7)(A).

ORDER

1. Student's second amended complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A).
2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

/s/

---

EILEEN M. COHN  
Administrative Law Judge  
Office of Administrative Hearings