

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. PANAMA-BUENA VISTA UNION SCHOOL DISTRICT, | OAH CASE NO. 2012010118 |
| PANAMA-BUENA VISTA UNION SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT. | OAH CASE NO. 2011110619 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT |

On January 13, 2012, Parent on behalf of Student filed an amended complaint, changing only an error in the caption of his original complaint, but leaving the substantive allegations untouched (Amended Complaint). On January 23, 2012, District timely filed a notice of insufficiency (NOI) as to Student’s Amended Complaint, in which it alleges that Issues 2, 5, and 6 were insufficient.

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

¹ 20 U.S.C. § 1415(b) & (c).

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

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.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 Amended Complaint contains detailed factual allegations that related to the issues alleged. Student alleges that despite eligibility for special education under the category of serious emotional disturbance (ED) since 2008, and a history of discipline problems since Student’s re-enrollment in the District on December 14, 2010, Student’s individualized education program (IEP) team has failed to consider the behavior assessment performed in June 2010 by the school district in which Student was previously enrolled (referred to in Student’s Amended Complaint as “Yorbita”), and District has failed to conduct its own behavior assessment(s), or to design and implement a behavior support plan (BSP) for the 2010-2011 and 2011-2012 school years. Student alleges that District claims to be implementing a 3-year old District BSP from 2008, but is using methods to address Student’s behavior that are not included in that, or any, BSP. Student’s Amended Complaint contends that when Parent requested on November 11, 2011, that District implement Yorbita’s more recent BSP, District refused to do so because the BSP was unsigned, even

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).

though Parent signed Yorbita's BSP in response to District's refusal. Student alleges that as a result of District's failure to assess his behavior and implement a BSP, or provide counseling services, Student has been denied a FAPE, and he requests education and counseling services. Student also contends that his curriculum was not modified as required in his IEPs.

District contends that Issue 2, "*Did District deny Student a FAPE during the 2010-2011 and 2011-2012 school year because it failed to provide services to meet Student's emotional needs and provide counseling services?*", is insufficient because the Amended Complaint does not inform District of the nature of the problem or set forth the exact amount of compensatory education or counseling sought. As discussed above, the Amended Complaint contains factual allegations related to this alleged problem. Student then specifically alleges that because of his ED eligibility he requires counseling services, which succinctly apprises District of the nature of the problem, facts relating to the problem and a proposed resolution to the problem, meeting the requirements of 20 U.S.C. § 1415(b)(7)(A). Student is not required to state the exact amount of compensatory education and counseling sought, as a complaint need only include proposed resolutions to the problem to the extent known and available to the party at the time the complaint is filed.⁷ Whether District designed and/or implemented a BSP and whether that BSP met Student's needs will be issues at the due process hearing, and the administrative law judge (ALJ) will ultimately decide those issues and determine the appropriate remedy. No further breakdown of the proposed remedies is required and this issue was sufficiently pleaded.

District argues that Issue 5, "*Did District deny Student a FAPE during the 2010-2011 and 2011-2012 school years when it failed to provide prior written notice regarding District's decision to reject Parent's request to implement Student's BSP that was in place [i]n the Prior School District?*," does not have sufficient information to inform District of the specific rejection at issue. Again, when read in conjunction with the factual allegations, this issue is sufficient. The Amended Complaint alleges that when District contacted Parent throughout the 2010-2011 and 2011-2012 school years to complain about Student's behavior, parent requested that District implement the Yorbita BSP, and that this request was again raised at the November 11, 2011, IEP team meeting. These allegations, read together, place District on notice that Student contends that District failed in both the 2010-2011 and 2011-2012 school years to notify and/or explain to Parent why District did not assess Student's behavior, design a current BSP, or implement the Yorbita BSP.

Issue 6 was also sufficiently pleaded. The Amended Complaint alleges that in 2010-2011 and 2011-2012, Student's IEP called for modified curriculum, but District's teachers failed to implement this portion of Student's IEP. District claims that it cannot determine which IEP is referenced, because the date of the IEP is not alleged. Student's allegation that the modified curriculum portion of his IEP was not implemented during the 2010-2011 and 2011-2012 school years is sufficient to raise this issue as to each and every IEP in effect during those periods.

⁷ 20 U.S.C. § 1415(b)(7)(A)(ii)(IV).

Finally, District contends that Student's proposed resolutions are not sufficiently alleged because Student does not state the specific components of a FAPE for Student in 2010-2011 or 2011-2012, nor "calculate" the amount of compensatory education and counseling services that he is requesting. As discussed above, the Amended Complaint alleges issues and facts relating to District's BSP, or lack thereof, and failure to provide counseling services or modify Student's curriculum, and seeks an order of FAPE for the remainder of the current school year and compensatory education and counseling services for past denials of FAPE. Student is required by 20 U.S.C. § 1415(b)(7)(A)(ii)(IV) only to propose a resolution to these problems as it is known at the time the complaint is filed, and it suffices that Student seeks a determination of FAPE and compensatory counseling and education services. It will be the responsibility of the ALJ, after hearing all of the evidence, to determine which services were, or are, necessary to provide a FAPE to Student for the periods at issue. The IDEA does not impose an additional requirement that the Student speculate or estimate the substance of the ALJ's decision, nor require that Student provide a precise calculation of the compensatory award.

In sum, Issues 2, 5 and 6, and the proposed resolutions are sufficient.

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: January 27, 2012

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings