

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

SOUTH PASADENA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012010173

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT AND DENYING
MOTION TO DISMISS

On January 9, 2012, Parents on behalf of Student (Student) filed a Due Process Hearing Request¹ (complaint) naming the South Pasadena Unified School District (District).

On January 19, 2012, the District filed a Notice of Insufficiency (NOI) as to Student's complaint and a motion to dismiss the fourth issue in the 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

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

The facts alleged in Student’s complaint are sufficient to put the District on notice of the issues forming the basis of the complaint. Student’s complaint involves a dispute over the appropriate services for Student. Student came into the District with an individualized educational program (IEP) from another school district, and Student believes the District should have provided Student with the services (including a one-to-one aide) from that IEP. Student breaks down the dispute into three distinct issues: 1) Student alleges a violation by the District in failing initially to adopt the placement and services from the prior district’s IEP or have a new, appropriate IEP in place; 2) Student alleges a violation based on failure by the District to conform to the prior district’s IEP; and 3) Student alleges that the program provided by the District failed to provide him with a FAPE. These allegations clearly set forth the nature of the dispute and contain sufficient facts to place the District on notice.

Finally, Student raises a fourth issue alleging that, even if everything the District did when Student first came to the District was correct, the District denied Student a FAPE by failing to amend the IEP to include additional services after Student started school in the District. That allegation, like the others, is sufficient to place the District on notice of Student’s claims.

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).

In addition to challenging the sufficiency of the fourth issue, the District also seeks to dismiss the fourth issue. Although the legal basis for the District's objection to the issue is unclear, it appears the District does not like the fact that Student raised what the District refers to as an "alternative theory of liability." However, there is nothing wrong with alleging a denial of FAPE based on a failure to amend an existing IEP. For example, California Education Code section 56341.1 provides that an IEP team shall revise a pupil's IEP when there is "a lack of expected progress toward the annual goals and in the general education curriculum...." There is nothing wrong with a Student alleging alternatively that a District denied FAPE either by providing an inappropriate IEP initially or by failing to amend that IEP based on subsequent events and knowledge.

ORDER

1. The complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).
2. The District's motion to dismiss is denied.
3. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: January 20, 2012

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings