

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SANTA MONICA-MALIBU UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2012010380

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On January 12, 2012, Valerie Vanaman, attorney at law, filed a Due Process Hearing Request¹ (complaint) on behalf of Student naming the Santa Monica-Malibu Unified School District (District) as respondent. On January 20, 2012, District filed a timely Notice of Insufficiency (NOI) as to Issue One² of Student's complaint.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.³ 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.⁴ These

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 In his complaint, Student refers to each claim as a "problem." For consistency, this order will refer to each claim as an "issue."

³ 20 U.S.C. § 1415(b) & (c).

⁴ 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.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 Individuals with Disabilities Education Act 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 Student’s complaint alleges three issues. Issues One and Two are comprised of multiple sub-issues and are sufficiently pled as discussed below. Issue Three, as discussed below, delineates a proposed remedy and does not raise an additional issue.

In Issue One, Student alleges that the District committed procedural and substantive violations resulting in a denial of a FAPE to Student, when District:

- A) failed to evaluate Student;
- B) failed to consider appropriate information in developing Student’s program;
- C) predetermined Student’s program;
- D) deprived Student of participation in the development of his program;
- E) misrepresented Student’s performance levels and educational needs resulting in Student’s agreement to exit special education;
- F) relied upon insufficient assessment data;

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).

- G) developed a program containing inaccurate information regarding Student's academic performance;
- H) developed a program without measurable annual goals;
- I) failed to offer appropriate goals;
- J) failed to provide a means for accurately measuring Student's progress;
- K) developed a program unsupported by peer-reviewed research and lacking educational content;
- L) developed a program that did not allow Student to progress in the general education curriculum; and
- M) developed a program lacking necessary instructional and support services.

The Student's complaint identifies the two year time frame at issue and specifies the dates of the relevant individualized education programs (IEP) that are at issue. Student provides details of his disability, processing issues, and educational needs. The complaint sets out a sufficient factual basis for Student's contentions that the District did not appropriately assess Student nor devise appropriate goals in the specific areas of reading, mathematics, social-emotional and executive functioning, resulting in Student's failure to progress in the general education curriculum. Student further provides a factual basis for his claims that the District predetermined Student's program by denying him meaningful participation in the IEP development process, disregarded Student's actual needs, and secured Student's consent to exit special education by misrepresenting Student's present levels of performance and educational needs. Student's Issue One is sufficiently pled to put District on notice as to the basis of Student's claims to meaningfully respond to Issue One, prepare for hearing, and participate in a resolution session and mediation.

Student's Issue Two asserts that District failed to provide an appropriate IEP from January 20, 2011 onwards, when District:

- A) inappropriately exited Student from special education;
- B) failed to offer Student an IEP at the start of the 2011-2012 school year; and
- C) failed to acknowledge Student's revocation of consent to the January 2011 IEP and refused to provide Student with appropriate services.

As outlined above, the complaint provides a sufficient factual basis for Student's contention that the District inappropriately exited him from special education. The Student alleges that the District obtained his consent to exit special education by misrepresenting Student's current levels of performance and educational needs. The Student provides sufficient detail in Issue Two, which allows the District to respond to the complaint, prepare for hearing, and participate in a resolution session and mediation. Accordingly, Issue Two is legally sufficient.

In Issue Three, Student requests he be provided an ongoing appropriate program, compensatory education and services, and reimbursements as a result of the District's failure to provide Student a FAPE. While crafted as an issue, this is in reality, Student's proposed resolution to the identified problems. 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).) The Student has met the statutorily required standard of stating a proposed resolution to the extent known and available to him at the time. Accordingly, Student's entire complaint is legally 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 26, 2012

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings