

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

IRVINE UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2012031146

ORDER DENYING NOTICE OF  
PARTIAL INSUFFICIENCY OF  
COMPLAINT AND PARTIAL  
REQUEST TO STRIKE ISSUES

On March 28, 2012 Student filed a Due Process Hearing Complaint<sup>1</sup> (complaint) naming District. On April 9, 2012, District timely filed a Partial Notice of Insufficiency (NOI) as to Student's complaint, in which it requested, in the alternative, an order striking certain issues.

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>

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<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).

<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.

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>

## DISCUSSION

Student’s complaint lists eighteen issues, and a proposed resolution relative to all of the issues.

Issues one through six pertain to Student’s December 14, 2009 individualized education program (IEP), as amended on January 22, 2010 and March 19, 2010, and allege that District denied Student a free appropriate public education (FAPE) by:

1. failing to offer adequate behavioral support to address Student’s behavioral and social deficits;
2. failing to offer appropriate supervision to the instructional assistant assigned to Student;
3. failing to provide an instructional assistant with sufficient training and experience to address Student’s behavioral and social deficits;
4. failing to implement Student’s IEP, specifically the specialized academic instruction and the behavior intervention plan called for in the IEPs as amended;
5. failing to offer Student an appropriate behavior support plan that was designed to be implemented and supervised by appropriately trained staff; and
6. failing to offer Student extended school year services (ESY).

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<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).

The statement of facts alleged in issues one through six sufficiently identifies the issues and adequate related facts about the problems to permit District to respond to the complaint and participate in a resolution session, mediation and hearing. District argues that issues one through six allege denials of FAPE that are outside of the applicable statute of limitations and that Student has not alleged any facts that support any waivers of the applicable statute of limitations. As such, District requests in the alternative to an order of insufficiency that OAH “strike” the “unclear issues.” Whether or not some portion or all of issues one through six falls outside of the statute of limitations requires evidentiary findings that must be determined by the hearing judge at hearing. That determination is not appropriate in a NOI. District’s request to “strike” issues one through six is denied.

Issues seven through 12 pertain to Student’s December 7, 2010 IEP, and allege that District denied Student a FAPE by:

7. Failing to offer home based specialized academic instruction to address his noncompliant, defiant and inattentive behaviors, and his social difficulties with peers;
8. Failing to offer appropriate supervision to Student’s special education instruction assistant;
9. Failing to offer a special education instruction assistant with sufficient training and experience to address Student’s behavioral and social deficits;
10. Failing to implement the specialized academic instruction and the behavior intervention plan called for in Student’s IEP;
11. Failing to offer and implement an appropriate behavior support plan, including collecting data, that would be supervised by appropriately trained staff;
12. Failing to offer Student ESY.

The statement of facts alleged in issues seven through 12 sufficiently identifies the issues and adequate related facts about the problems to permit District to respond to the complaint and participate in a resolution session, mediation and hearing.

Issues 13 through 18 pertain to Student’s December 6, 2011 IEP, and allege that District denied Student a FAPE by:

13. Failing to offer home based behavior support at school or home to address his behavioral and social deficits;
14. Failing to offer appropriate supervision to Student’s special education instruction assistant;
15. Failing to offer a special education instruction assistant with sufficient training and experience to address Student’s behavioral and social deficits;
16. Failing to implement the specialized academic instruction and the behavior intervention plan, including collecting data, called for in Student’s IEP;
17. Failing to offer and implement an appropriate behavior support plan, including collection of data, that would be supervised by appropriately trained staff;
18. Failing to offer Student ESY.

The statement of facts alleged in Issues 13 through 18 identifies the issues and adequate related facts about the problems to permit District to respond to the complaint and participate in a resolution session, mediation and hearing

ORDER

1. The complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).
2. District's motion to strike issues outside the statutes of limitations is denied. District may raise the statute of limitations as a defense at hearing.
3. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: April 11, 2012

/s/  
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ADRIENNE L. KRIKORIAN  
Administrative Law Judge  
Office of Administrative Hearings