

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PASADENA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012050171

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT(S)

On May 3, 2012 Student filed a Due Process Hearing Request ¹ (complaint) naming Pasadena Unified School District (District). On May 8, 2012 Student filed a request to amend the complaint. On May 11, 2012, District filed a Notice of Insufficiency (NOI) and response to Student's original and amended complaint (combined complaints). The amended complaint does not incorporate the original complaint but is construed as intended to add to the original complaint. Thus for purposes of the due process proceedings and this sufficiency determination, both the original complaint and the amended complaint combined are treated as the operative complaint.

On May 15, 2012 an order granting the amended complaint was issued concurrently with the instant Determination of Sufficiency.

District moves in its NOI to dismiss, in part, proposed remedy number two and number seven in the original complaint and further moves to dismiss the amended complaint in its entirety on the grounds that the complaints fail to meet the legal standard for sufficiency of due process pleadings. Based on the discussion and applicable law below Student's complaints, combined, are deemed sufficient and District's NOI is denied.

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).

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).

The complaint is deemed sufficient unless a party notifies the Office of Administrative Hearings and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements.³

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 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 IDEA 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

³ 20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).

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

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).

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).)

May 3, 2012 Complaint

The complaint contains eleven sufficiently defined issues and eight proposed resolutions. Since District's NOI seeks to dismiss only proposed resolutions two and seven the determination order as to the original complaint is limited to the sufficiency of the controverted remedies.

Issue Ten of the complaint alleges District failed to assess Student in all areas of "potential" disability. Proposed Resolution Two of the complaint requests OAH order an independent educational assessment. The issues raised in the complaint in its entirety allege District's failure to determine Student's needs as child with autism and other health impairment and to provide a free appropriate public education (FAPE) consistent with those needs. Proposed Resolution Seven requests OAH order District to provide staff availability during the summer to determine Student's placement and services for the coming school year. The facts alleged in Student's complaint are sufficient to put the District on notice of the issues forming the basis of the complaint. Proposed resolutions two and seven in the complaint are well-defined.

Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time. Student's complaint identifies the issues and adequate related facts about the problem to permit District to respond to the complaint and participate in a resolution session and mediation.

May 8, 2012 Amended Complaint

The amended complaint asserts four additional sufficiently defined issues and four proposed resolutions. Issues One and Two allege District failed to provide a FAPE in the 2010-2011 and the 2011-2012 school years by taking unilateral action to change agreed-upon services as set forth in Student's IEP. Issues Three and Four allege District failed to provide a FAPE by not providing an adequately trained behavior aide, a behavior plan and services. The Proposed Resolutions request remedies consistent with the alleged failures to provide Student a FAPE as set forth in the amended complaint.

Student's amended complaint identifies the issues and adequate related facts about the problem to permit District to respond to the complaint and participate in a resolution session and mediation. Moreover, Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

ORDER

1. The combined complaints are sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

2. All mediation, prehearing conference, and hearing dates in this matter will be confirmed based upon a new scheduling order issued pursuant to the order granting the amended complaint issued on May 15, 2012.

Dated: May 15, 2012

/s/

STELLA OWENS-MURRELL
Administrative Law Judge
Office of Administrative Hearings