

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

OAKLAND UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012060531

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On June 11, 2012, Parent, on behalf of Student (Student) filed a Due Process Hearing Request¹ (complaint) naming Oakland Unified School District (District).

On June 15, 2012, OAH issued a Scheduling Order and Notice of Dual Hearing Dates (Scheduling Order). Based on the issues set forth in the complaint, OAH set the matter for two hearing dates. An expedited hearing schedule was set for Student's allegation that District failed to conduct a manifestation determination. A second hearing schedule was set for Student's remaining issues.

On June 18, 2012, District filed a Notice of Insufficiency (NOI) as to Student's complaint.

APPLICABLE LAW

Parents have the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).)

Except as discussed below, 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).

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 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

Title 20 United States Code section 1415(k)(1)(E), regulates the manifestation determination procedure. In general, to remove a special education student from his current educational placement for more than 10 school days, the District must convene a manifestation determination meeting. (20 U.S.C. § 1415(k)(1)(A)-(E).) Section 1415(k)(3)(A) permits a child’s parent who disagrees with any decision regarding placement or a manifestation determination under this subsection to request a hearing. An expedited hearing shall be held within 20 school days of the date the hearing is requested. A decision or “determination” shall be made by the hearing officer within 10 school days after the hearing. (20 U.S.C. § 1415(k)(4)(B).) The expedited hearing procedures set forth in 20 United States Code section 1415(k)(1) do not provide for the filing of NOI’s.

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

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).

DISCUSSION

Student is five years old and attends kindergarten at Laurel Elementary School within District. Student states three claims: First, Student alleges that he was denied a FAPE because District failed to place Student in a Special Day Class (SDC) even though an independent psychological exam and evidence from Student's classroom teacher demonstrate Student's current placement is inappropriate. Student alleges that District refuses to place Student in an SDC until District receives the results of a county mental health assessment. Secondly, Student alleges District has denied Student a FAPE because District has not provided Student an extended school year (ESY). Finally, Student's third issue alleges District has failed to conduct a manifestation determination "despite ten days of suspension." Student's proposed resolutions include placement in an SDC, Student to receive ESY, and District to conduct a manifestation determination.

In its NOI, District contends that Student's complaint is insufficient because District is waiting until it has the results of assessments before making changes in Student's placement or providing ESY. District argues this is a valid reason for failing to change Student's current placement or offer Student ESY. District's NOI does not address the manifestation determination issue, and, as discussed above, an NOI is not legally available to challenge the sufficiency of a complaint on that issue.⁸

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 identifies the issues, adequate related facts about the problem, and proposed resolutions, sufficient to permit District to respond to the complaint and participate in a resolution session and mediation. The IDEA requires only a "description of the nature of the problem," facts related to the problem and proposed resolutions to the extent known and available at the time (20 U.S.C. (b)(7)(A)(ii)), a requirement liberally construed in light of the remedial and informal nature of the due process proceedings. Therefore, Student's complaint is sufficient.

District's NOI is, essentially, a motion for summary adjudication. District simply disputes Student's factual allegations concerning the refusal to provide an appropriate placement for Student. This factual dispute cannot be resolved at this stage of the due process proceedings. District fails to point to any authority that would require OAH to hear and determine the equivalent of a judgment on the pleadings or motion for summary adjudication prior to giving a petitioner the opportunity to develop a factual record at hearing. In light of the liberal notice

⁸ The Scheduling Order set an expedited Prehearing Conference on Student's third issue, the manifestation determination, for July 2, 2012. Whether Student's third issue should proceed as an expedited matter may be resolved at the Prehearing Conference. In this regard, the complaint alleges that Student was suspended for 10 days. A manifestation determination, and an expedited hearing, are only required if the subject suspension is in excess of 10 school days. (20 U.S.C. § 1415(k)(1).)

pleading standards applicable to IDEA due process hearing requests, as a general matter, sufficiently pleaded due process hearing requests should proceed to hearing.

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: June 25, 2012

/s/

MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings