

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BELMONT-REDWOOD SHORES  
ELEMENTARY SCHOOL DISTRICT.

OAH CASE NO. 2012080014

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On July 31, 2012, Natashe Washington, attorney at law, filed a Due Process Hearing Request<sup>1</sup> (complaint) on behalf of Student, naming the Belmont-Redwood Shores Elementary School District (District). On August 6, 2012, Jan E. Ellard, attorney at law, timely filed a Notice of Insufficiency (NOI) as to Student's complaint, on behalf of the District.<sup>2</sup>

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.<sup>3</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

---

<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> The District also filed a motion to dismiss and a request for sanctions, each of which are addressed in separate orders.

<sup>3</sup> 20 U.S.C. § 1415(b) & (c).

resolution of the problem to the extent known and available to the party at the time.<sup>4</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>5</sup>

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”<sup>6</sup> 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.<sup>7</sup> Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.<sup>8</sup>

## DISCUSSION

Student alleges that she is eligible for special education services under the category of autism. She is four years old and resides with her parents within the District’s boundaries. Student attends a private preschool funded by the District pursuant to a September 2011 settlement agreement. Student’s complaint raises six issues. The District solely contends that Issue Five is insufficient. This order will only address the sufficiency of Issue Five.

In Issue Five, Student alleges that the District’s offer of a special day class preschool at the May 17, 2012, individualized educational program team meeting will not provide Student with a FAPE in the least restrictive environment (LRE). Student identifies the placement offered by the District, when it was offered, and related facts as to why the District’s offered placement is not the LRE for Student. Student alleges that she is currently attending a preschool placement with typically developing peers; that her skills have

---

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

<sup>5</sup> See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

<sup>6</sup> Sen. Rep. No. 108-185, *supra*, at p. 34.

<sup>7</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>8</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).

improved as noted by her teacher; that she is attentive; and that she participates in the class without any report of behavior problems or a negative impact on the class. 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 and adequate related facts about the problem to permit the District to respond to the complaint and participate in a resolution session and mediation. Therefore, Student's Issue Five is sufficient.

As part of a proposed resolution, Student requests a full inclusion placement with supplementary aids and services; the provision of compensatory education in the form of Applied Behavior Analysis and speech and language services, and tuition reimbursement. 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).) Student has met the statutorily required standard of stating a resolution to the extent known and available to her at the time.

### 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: August 9, 2012

/s/  
\_\_\_\_\_  
THERESA RAVANDI  
Administrative Law Judge  
Office of Administrative Hearings