

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
SPECIAL EDUCATION DIVISION
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

Petitioner,

vs.

BEVERLY HILLS UNIFIED SCHOOL
DISTRICT,

Respondent.

OAH Case No. N2006040316

**DETERMINATION OF
SUFFICIENCY OF
AMENDED DUE PROCESS
HEARING REQUEST**

On April 11, 2006, Areva Martin, attorney for Petitioner Student (Student), filed a request for a due process hearing on behalf of Student. On April 21, 2006, Adam Newman, attorney for Respondent Beverly Hills Unified School District (District), filed a Notice of Insufficiency (NOI) asserting that Student's due process complaint does not meet the pleading requirements of Title 20 United States Code section 1415(b)(7)(A).¹

APPLICABLE LAW

The "Individuals with Disabilities Education Improvement Act of 2004" (IDEA) became effective July 1, 2005, and amended Title 20 United States Code sections 1415(b) and (c). According to section 1415(b)(7)(B), a party may not have a due process hearing until the due process hearing complaint notice (Complaint) meets the specifications listed in section 1415(b)(7)(A). Further, the amended IDEA added a provision that allows a party to challenge the sufficiency of the due process notice within 15 days of filing under section 1415(c)(2)(A) and (C).

It is a fundamental principle of due process that respondents are entitled to know the specific allegations against them so that they may be able to respond and

¹ All statutory references are to Title 20 of the United States Code unless otherwise specified.

prepare their defenses. (*Tadano v. Manney* (9th Cir. 1947) 160 F.2d 665, 667; *Hornsby v. Allen* (5th Cir. 1964) 326 F.2d 605, 608.)

Section 1415(b)(7)(A)(ii)(III) and (IV) require a Complaint to provide three distinct elements to be sufficient: (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 FAPE to the child (Section 1415(b)(3) and (b)(7)(A)(ii)(III)); (2) facts relating to the problem (*ibid.*); and (3) a proposed resolution of the problem to the extent known and available to the party at the time (Section 1415(b)(7)(A)(ii)(IV)). The Complaint must allege a clear connection between the factual allegations and the alleged violations.

An important principle of statutory construction is to give effect to the intent of Congress. (*Padilla v. Lever* (9th Cir. 2005) 429 F.3d 910.) The House Committee on Education and the Workforce, in its analysis of section 1415(b)(7), stated that the requirement of a clear and specific Complaint is essential to make the complaint process work in a fair and equitable manner. (H.R.Rep. No. 108-77, 1st Sess. (2003).)² The Senate Committee on Health, Education, Labor and Pensions, in its analysis of Section 1415(b)(7), stated, “The purpose of the sufficiency requirement is to ensure that the other party, which is generally the school district, will have an awareness and understanding of the issues forming the basis of the complaint.” (Sen. Rep. No. 108-185, 1st Sess. (2003).) The purpose of section 1415(b)(7) is to avoid leaving the school district with no idea as to what the real issues will be at the due process hearing, and forcing the district to prepare for any and every issue that could be possibly raised against it. (*Ibid.*) In addition, the section’s specificity requirements allow a school district to provide, if necessary, a specific response to the student under section 1415(c)(2)(B), and to participate fully in the informal resolution process under section 1415(f)(a)(B) and mediation under section 1415(e). (*Ibid.*)

DISCUSSION

The District’s NOI acknowledges that the complaint adequately describes the nature of the dispute. However, the District alleges that Student’s proposed resolutions are too vague and do not include sufficient facts regarding the proposed resolutions.

The Student’s proposed resolutions include remaining in a public school placement in a special day class with resource services support and services including counseling for one hour per week, assistive technology, and behavior intervention

² The House Report noted, “If a parent cannot identify a specific problem, then the parent should ask to reconvene the IEP [Individualized Education Program] Team and discuss what their [sic] concerns are rather than filing a complaint to see if a hearing officer can determine the problem.” (H.R.Rep. No. 108-77, 1st Sess., page citation unavailable (2003).)

services for 20 hours per week. Additionally, the Student identifies some proposed resolutions which are somewhat vague, such as “behavior intervention development for 4 hours a week” and “reimbursement for private behavior assessment intervention.” The District is correct that some aspects of these proposed resolutions are vague; for example, it is unclear for which private behavior assessment Petitioner seeks reimbursement, and whether Petitioner’s parents sought the assessment due to their disagreement with a District assessment. However, given the overall specificity of the Complaint and the other proposed resolutions identified therein, the few vague aspects of some of the proposed resolutions are relatively minor, can be easily clarified prior to hearing, and do not create any actual uncertainty as to the specific allegations being raised against the District.

ORDER

The complaint is deemed sufficient and Respondent’s motion is denied.

Dated: April 25, 2006

SUZANNE B. BROWN
Administrative Law Judge
Special Education Division
Office of Administrative Hearings