

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. 2011030562

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On March 10, 2011 Student filed a Request for Due Process Hearing¹ (complaint) naming Pasadena Unified School District (District).

On March 25, 2011, District timely filed a Notice of Insufficiency (NOI) as to Student's complaint.

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).

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

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).

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

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

DISCUSSION

Student’s complaint generally alleges that the District did not provide a FAPE in the initial IEP of December 8, 2010, and the reconvened IEP of January 18, 2011. The complaint alleges four claims (with subparts) in the complaint. District contends that some are insufficiently pled. However, as discussed below, the issues are sufficient.

Issue A-1 asserts that the psycho-educational evaluation was inadequate because it failed to identify or discuss Student’s autism. District contends that Issue A-1 is insufficiently pled because Student does not indicate how the December 8, 2010 assessment and subsequent IEP could address Student’s autism because Student was not formally diagnosed with autism until February 28, 2011, by the Boon Fetter Clinic at Children’s Hospital Los Angeles. District argues it could not have addressed the Student’s autism because it had not yet been diagnosed. The issue sufficiently sets forth that Student’s autism should have been identified and addressed, irrespective of whether Student had been medically diagnosed. District’s argument is evidentiary and reserved for hearing. Issue A-1 provides District with sufficient information to prepare a response.

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).

Issue B-2 asserts that the IEP's goals and objectives were not measurable. District contends the Issue B-2 is insufficient because the complaint does not state what goals were inadequate, what goals were not included, and how the goals were not measurable. Issue B-2 is a generic allegation which sets forth the law and then states that District failed to comply with the law. Read without context, Issue B-2 is insufficient. However, within the complaint's section B and, specifically, Issue B-1, Student refers to inadequate speech and language PLOPs which precluded the creation of effective goals. Therefore Issue B-2 is sufficiently pled and is limited to goals and objectives related to speech and language, which are allegedly based on inadequate PLOPs.

Issue C-3 asserts that District failed to offer extended school year (ESY) services that were necessary for providing FAPE. District contends Issue C-3 is insufficient because Student does not provide any facts in support of Student's unique needs and potential regression or recoupment capability. However, the complaint states that the IEP team only discussed physical therapy services for the summer but ignored speech and language and occupational therapy needs. Student contends these were needs which needed to be addressed with ESY services. Issue C-3 provides District with sufficient information to know how to prepare for the hearing and how to participate in resolution session and mediation.

Issue D-2 claims that District failed to provide prior written notice, having denied Parents' request for specified speech and language services to address Student's communication needs. District contends the issue is insufficient because it does not indicate when or how Parents allegedly requested the services. However, reading Issue D in its entirety, Student refers to a privately funded November 29, 2010 speech and language evaluation, which was presented by Yasmin Rahimtoola, Associate Director of Speech-Language Programs for Justine Sherman & Associates, at the initial December 2010 IEP. At that time, consistent with the private evaluation, Ms. Rahimtoola made specific speech and language service recommendations. Within this context, the speech and language service referred to in Issue D-2, are those listed in the November 2010 speech and language evaluation, which was provided to District and presented at the IEP. Issue D-2 provides District with sufficient information to know how to prepare for the hearing and how to participate in resolution session and mediation.⁸

The complaint lists 10 items as proposed resolutions. District expresses confusion because the proposed resolutions differ from what the body of the complaint refers to as required specific supports and related services. District does not state any issue with the proposed resolutions themselves. 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.

⁸ District asserts the complaint is unclear when it generally states that District did not offer an educational program with appropriate structure, curriculum, learning activities and services. However, this assertion is not an issue and, instead, is circumscribed by the complaint's subsequently enumerated issues.

§1415(b)(7)(A)(ii)(IV).) Student has proposed specific resolutions to the issues stated in the complaint. The proposed resolutions are well-defined and are statutorily adequate.

ORDER

1. Issue B-2 is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii), and is limited to goals and objectives related to speech and language.
2. All other issues of the complaint are sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).
3. The proposed resolutions are well-defined and are adequate under Title 20 United States Code section 1415(b)(7)(A)(ii)(IV).

Dated: March 29, 2011

/s/

CLIFFORD H WOOSLEY
Administrative Law Judge
Office of Administrative Hearings