

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

NEWPORT-MESA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012050694

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On May 15, 2012 Student filed a Request for Due Process Hearing¹ (complaint) naming the Newport-Mesa Unified School District (District). On May 25, 2012, the District timely filed a Notice of Insufficiency (NOI). On June 6, 2012, OAH issued an Order (June Order) finding some of Student's issues were sufficiently pled, certain particular enumerated issues were insufficiently pled and permitting Student to file an amended complaint.

On June 20, 2012, Student timely filed an Amended Request for Due Process Hearing (amended complaint). On June 29, 2012, District timely filed an NOI as to Student's amended 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

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).

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

DISCUSSION

Student is 10 years old. He resides and attends public school in a general education classroom within District. He is eligible for special education services as a child with autistic like behavior, with a secondary eligibility of speech and language impairment.

Student’s amended complaint contains the same factual allegations and the same three legal issues stated in his complaint. Issue I is whether District denied Student a FAPE from May of 2010, through the end of the 2009-2010 school year, including the extended school year (ESY) and for the 2010-2011 school year including ESY. Issue II is whether District denied Student a FAPE for the 2010-2011 school year including ESY. Since the time period in Issue II is included within the time period of Issue I, the allegations are much the same. Issue III is whether District denied Student a FAPE for the 2012-2013 school year and ESY. Generally, as to all three issues, Student contends District denied him a FAPE by: a) failing to provide an appropriate placement; b) reducing his speech and language (LAS) and occupational therapy services; c) failing to provide applied behavioral analysis (ABA) therapy services during the summer; d) failing to conduct a functional analysis assessment or functional behavior analysis; e) failing to develop a behavior support plan; f) providing

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).

resource support services that did not help Student progress; g) failing to address his behavioral needs; h) failing to assess Student for attention deficit disorder or attention deficit/hyperactivity disorder; and (i) failing to properly train Student's one-to-one aide.

District's NOI argues the amended complaint does not cure the allegations found to be insufficient in the June Order. The 40 page amended complaint differs from the 37 page complaint only insofar as the amended complaint contains additional allegations in some but not all of the issues found partially or wholly insufficient in the June Order. Student's amended complaint has been reviewed in its entirety and in light of the June Order. As discussed below, Student's amended complaint is sufficient as to those issues containing additional allegations consistent with the June Order. Where the amended complaint contains no additional allegations, the amended complaint is insufficient as to those issues determined to be partially or wholly insufficient in the June Order.

Issues I(A), I(C), II(A), II(B), and II(C) of the complaint were determined to be partially insufficient under Title 20 United States Code section 1415(c)(2)(D) in the June Order. Issues I(A), II(A) and II (B) contain additional allegations in the amended complaint. Issues I(C) and II(C) do not.

In Issue I(A), Student alleges District failed to offer him an appropriate placement and supports. The June Order determined Issue I(A) was partially insufficient because Student failed to state why his placement was inappropriate or what his placement should have been. Student's amended complaint contains additional allegations that Student's general education placement with limited RSP support was inappropriate because the placement lacked appropriate behavioral interventions, trained aides, structure and individualized support, did not use appropriate teaching strategies and individualized instruction and did not include appropriate modifications and supports. As a result Student failed to make progress on his goals and objectives. The amended complaint further alleges Student should have been placed in a more structured and predictable environment with visual supports, a research based reinforcement system, a smaller student teacher ratio, staff trained in positive behavioral interventions and a program with language based input from a speech and language pathologist. These allegations are sufficient to enable District to respond to the amended complaint, participate in a resolution session and mediation and to prepare for hearing. Therefore, the issue in I(A) is sufficiently pled.

In Issue II(A), Student contends District should have placed him at the Buena Park Speech and Language Center, a non-public school (NPS), based upon recommendations from his private assessors. Here again, as with Issue I(A), the June Order found the allegation partially insufficient because Student failed to state why District's placement was inappropriate and why he needed the proposed private placement to obtain a FAPE. Issue II(A) in the amended complaint now alleges both District and parents observed Buena Park Speech and Language Center to provide an appropriate program because the Buena Park Speech and Language Center provided all of the supports required to address Student's severe speech and language deficits. The issue in II(A) is sufficiently pled.

In Issue II(B), Student contends District failed to provide appropriate LAS services. The June Order determined Issue II(B) was partially sufficient but that Student failed to state why he required additional services. Student's amended complaint contains additional allegations referencing a specific assessment that noted Student's areas of need and concluded Student required two thirty minute sessions per week of individualized LAS and one thirty minute group session. The issue in II(B) is sufficiently pled.

Issue III was determined to be insufficient under Title 20 United States Code section 1415(c)(2)(D) in the June 2012 Order. Issue III(A) and (B) contain additional allegations in the amended complaint.

In Issue III(A), Student alleges District failed to offer him an appropriate placement and supports. The June Order determined Issue III(A) was insufficiently pled because Student failed to state why the District-offered placement was inappropriate and why he required placement in the NPS to obtain a FAPE. Here, as with Issue I(A), the amended contains additional allegations that Student's placement lacked appropriate behavioral interventions, trained aides, structure and individualized support, did not use appropriate teaching strategies and individualized instruction and did not include appropriate modifications and supports, resulting in Student's failure to make progress on his goals and objectives. The amended complaint further alleges Student should have been placed in a more structured and predictable environment with visual supports, a research based reinforcement system, a smaller student teacher ratio, staff trained in positive behavioral interventions and a program with language based input from a speech and language pathologist. Therefore, the issue in III(A) is sufficiently pled.

In Issue III(B), Student alleges District failed to offer appropriate frequency, duration, and type of related services. The June Order determined Issue III(B) was insufficiently pled because Student failed to specify which services were inadequate, the specific additional services he believed he required, and why he needed those services in order to receive a FAPE. Here, as with Issue I(B), the amended complaint contains additional allegations referencing a specific assessment that noted Student's areas of need and concluded Student required two thirty minute sessions per week of individualized LAS and one thirty minute group session. Therefore, the issue in III(B) is sufficiently pled.

The amended complaint contains no additional allegations as to Issue I(C), II(C) or III(C). In these sub-issues Student alleges District failed to provide an appropriate number of goals in the areas of speech and language, behavior, occupational therapy, and reading and writing, and District failed to devise appropriate measurable and meaningful goals and objectives in all areas of specific need. The June Order found Student's allegations that District failed to provide an appropriate number of goals were sufficiently pled. However, the June Order concluded Student failed to allege sufficient facts to support his contention the goals were not measurable or were not meaningful. The amended complaint does not contain any additional facts in support of Student's contention the goals were not measurable or meaningful. Therefore, the issue of whether the number of goals in speech and language, behavior, occupational therapy, and reading and writing, were appropriate continues to be

pled sufficiently. However, the insufficiencies described in the June Order have not been cured in the amended complaint, thus the issue of whether the challenged goals were measurable and meaningful is not sufficiently pled.

Lastly, District continues to challenge the sufficiency of Student's proposed resolutions. The June Order determined Student's proposed resolutions met this requirement. 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).) Here, Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

ORDER

1. Issues I(A), II(A), II(B), III(A) and III(B) of Student's amended complaint are sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

2. Issues I(C), II(C), and III(C) as to whether District failed to provide an appropriate number of goals in the areas of speech and language, behavior, occupational therapy, and reading and writing are sufficient under Title 20 United States Code section 1415(c)(2)(D), as explained above.

3. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: July 06, 2012

/s/

MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings