

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

GLENDALE UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2015080049

ORDER DENYING STUDENT'S
NOTICE OF INSUFFICIENCY

On July 28, 2015 Glendale Unified School District filed with the Office of Administrative Hearings a Due Process Hearing Request¹ (complaint) naming Parent on behalf of Student.

On July 31, 2015, Student filed with OAH filed a Notice of Insufficiency as to Glendale's complaint.

On August 5, 2015, Glendale filed a reply to Student's NOI.

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 to the child; (2) facts relating to the problem; and (3) a proposed resolution

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).

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)(3) permits a party to request an expedited hearing to appeal a decision regarding a disciplinary change of placement, such as placement in an alternative educational setting, or a manifestation determination regarding student’s conduct. This section requires an expedited hearing to occur within 20 school days of the date the hearing is requested and for a decision to be rendered within 10 school days of the conclusion of the hearing. With respect to expedited hearing requests, there is no provision similar to that in title 20 United States Code section 1415(c)(2), allowing for the testing of the sufficiency of an expedited hearing request.

DISCUSSION

Glendale’s complaint contains two related issues. Issue one I whether Student’s current placement at Horace Mann Elementary School is substantially likely to result in injury to Student or others. The second issue is whether Glendale’s proposed placement for

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).

45 days in the therapeutic program at Dunsmore Elementary School is an appropriate interim alternative educational setting placement. Both of which are expedited.

Although OAH has granted motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc.) OAH does not grant motions to grant a notice of insufficiency as to expedited matters. Therefore, because a notice of insufficiency is not permitted with respect to expedited hearing requests, Student's notice of insufficiency is DENIED.

ORDER

Student's notice of insufficiency is denied.

DATE: August 6, 2015

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings