

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

HEMET UNIFIED SCHOOL DISTRICT,
RIVERSIDE COUNTY OFFICE OF
EDUCATION, AND NUVIEW UNION
SCHOOL DISTRICT

OAH Case No. 2015110165

ORDER DETERMINING COMPLAINT
SUFFICIENT

On November 02, 2015, Parents on Behalf of Student filed a Request for Due Process Hearing¹ (complaint) with the Office of Administrative Hearings naming Hemet Unified School District, Riverside County Office of Education, and Nuview Union School District. On November 5, 2015, Hemet timely filed a Notice of Insufficiency as to Student's complaint.

APPLICABLE LAW

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 of the problem to the extent known and available to the party at the time. (20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).) 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. (See H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.)

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint." (Sen. Rep. No. 108-185, *supra*, at p. 34.) 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

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 U.S.C. section 1415(b)(7)(A).

it authorizes. (*Alexandra R. ex rel. Burke v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, CIV. 06-CV-0215-JL) 2009 WL 2957991[nonpub. opn.]; *Escambia County Bd. 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, 8:04CV2657T24EAJ) 2005 WL 2850076 [nonpub. opn.]; but cf. *M.S.-G v. Lenape Regional High School Dist. Bd. of Educ.* (3d Cir. 2009) 306 Fed.Appx. 772, 775 [nonpub. opn.].) Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge. (*Assistance to States for the Educ. of Children with Disabilities & Preschool Grants for Children with Disabilities* (Aug. 14, 2006) 71 FR 46,540-46541, 46699.)

DISCUSSION

Student's complaint alleges he is six years old and is eligible for special education with a primary eligibility of intellectual disability and a secondary eligibility of speech and language disorder. The complaint alleges Student has multiple severely disabling conditions due to Down 's syndrome and that he is identified as an English Language Learner. Student attended elementary school in Hemet during the 2013-2014 school year. Student attended a Riverside County Office of Education program at an elementary school within Nuvview Unified School District between September 2014 and January 2015. Student moved back to within Hemet's boundaries on January 8, 2015, and at the time the complaint was filed attended first grade at a Hemet elementary school.

Although Student transferred back and forth between schools in Hemet and Nuvview in the two years before the complaint was filed, the complaint contains specific factual allegations as to Hemet and identifies the problems that involve Hemet in particular and to all respondents in general.

The 32 page complaint alleges three issues pertaining to substantive and procedural violations of the IDEA (including 13 specific subparts); failing to properly assess Student in all areas of suspected disability (identifying eight specific areas); and denying Parents' right to participate in the decision making processes (identifying four specific areas). Each subpart applies either to all respondents or identifies a particular respondent. For example the problem alleged in issue 1(b) is "Failure to provide appropriate goals." As to all Respondents, issue 1 (b) alleges that none of Student's IEP's for the 2013-2014, 2014-2015, and 2015-2016 school years contained appropriate goals because there were no accurate present levels of performance due to the lack of appropriate assessments during those years. Specifically, as to Hemet, issue 1 (b) further alleges Hemet eliminated Student's articulation goal from the February 9, 2015 IEP even though Hemet was aware Student's speech was unintelligible.

The complaint alleges facts specific to Hemet describing in detail individualized education program meetings held on February 27, 2014, May 29, 2014, February 9, 2015, March 25, 2015, May 1, 2015, a health assessment dated February 6, 2015, and a triennial psychoeducational assessment and various tests in March 2015. The complaint identifies the individuals involved; the services and placement offered and the reasons Student contends

Hemet did not provide Student a free appropriate public education; the assessments performed, the results of the assessments and the reasons Student contends the assessments were not appropriate; and the assessments that should have been conducted and the reasons why. The complaint also alleges, in May 2014, Hemet unilaterally and without notice changed Student's placement to a more restrictive environment.

The facts alleged in Student's complaint are sufficient to put Hemet on notice of the issues forming the basis of the complaint. Student's complaint identifies the issues and adequate related facts about the problems to permit Hemet to respond to the complaint and participate in a resolution session and mediation.

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. The matter shall proceed as scheduled.

DATE: November 09, 2015

/s/
MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings