

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

LUCERNE UNIFIED SCHOOL DISTRICT;
DESERT MOUNTAIN SELPA, et al.

OAH CASE NO. 2010061410

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On June 28, 2010, Student's parents on behalf of Student (Student) filed a Due Process Hearing Request¹ (complaint) naming, among others, the Lucerne Unified School District (District) and Desert Mountain SELPA (SELPA).

On July 12, 2010, the District and SELPA jointly filed a notice of insufficiency 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 named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.⁴

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)

⁴ 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.”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 ALJ.⁷

DISCUSSION

The facts alleged in Student’s complaint are sufficient to put the District and SELPA on notice of the issues forming the basis of the complaint. In the notice of insufficiency, the District and SELPA contend that there are no specific facts alleged which tie them to any of the factual allegations of Student’s complaint. However, Student’s complaint specifically alleges that the District was the local educational agency responsible for the charter school involved with Student’s education. Student alleges that the SELPA was the agency overseeing various local educational agencies, including the District. The issues set forth in the complaint allege that the District and SELPA were among those agencies responsible for the conduct in question. Those allegations are sufficient for purposes of stating a case under federal and state educational law.

The District and SELPA also argue that the facts alleged in the complaint do not present a showing of a denial of FAPE. Contrary to their contentions, Student’s complaint contains factual allegations of both procedural and substantive violations. Those allegations are sufficient to permit the District and SELPA to respond to the complaint and to participate in a resolution session and mediation.

The District and SELPA also argue that the proposed resolutions in the complaint are confusing and not supported by the factual allegations. 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).) The proposed resolutions set forth in Student’s complaint are clearly stated and are sufficient to meet the statutorily required standard of stating a resolution to the extent known and available to Student at the time.

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).

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.

Dated: July 14, 2010

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings