

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SOUTH PASADENA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010110453

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On November 8, 2010, Student filed a Due Process Hearing Request¹ (complaint) naming District as the respondent. On November 23, 2010, District filed a Notice of Insufficiency (NOI) as to Student's complaint. As discussed below, the complaint is sufficient.

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

The facts alleged in Student’s complaint are sufficient to put District on notice of the issues forming the basis of the complaint. The complaint alleges that District denied Student a FAPE by (1) failing to assess her in all areas of suspected need, specifically (a) failing to conduct any vision therapy assessment, (b) failing to conduct an adequate psycho-educational assessment prior to the November 19, 2008 IEP, and (c) failing to conduct an adequate speech and language assessment prior to the November 19, 2008 IEP; (2) stating inappropriate present levels of performance, goals and objectives in IEPs dated November 19, 2008, October 21, 2009 and March 12, 2010; (3) offering inappropriate placement and related services in IEPs dated November 19, 2008, October 21, 2009 and March 12, specifically (a) failing to place her in a structured classroom, (2) placing her in a special day class that was not the least restrictive environment, and (3) offering an educational program that was not research-based; (4) failing to offer appropriate OT services in the January 21, 2009 IEP and discontinuing OT services as of June 2009; (5) discontinuing counseling services in the October 21, 2009 IEP; and (6) failing to offer extended school year services in the October 21, 2009 IEP.

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).

Student's complaint identifies the issues and adequate related facts about the problem to permit District to respond to the complaint and participate in a resolution session and mediation. Therefore, Student's statement of the claims is sufficient.

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: November 30, 2010

/s/

JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings