

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SANTA MONICA-MALIBU UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2010110703

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
AMENDED COMPLAINT

On November 19, 2010, David M. Grey, attorney, on behalf of Student filed a Due Process Hearing Request¹ (complaint) naming the Santa Monica-Malibu Unified School District (District). On November 29, 2010, Adam J. Newman, attorney for the District, filed a Notice of Insufficiency (NOI) as to Student's complaint. On December 3, 2010, the Office of Administrative Hearings found Student's complaint insufficient, dismissed the complaint and allowed leave for Student file an amended complaint.

On December 15, 2010, Student filed an amended Due Process Hearing Request (amended complaint) naming the District. On December 21, 2010, the District filed a 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

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).

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

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 amended complaint are sufficient to put the District on notice of the issues forming the basis of the complaint. Student identifies dates and relevant facts to support a claim that the Student’s individual education plan, as designed by the District, does not provide Student with educational benefit. Student’s amended 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 claim is sufficient.

Student’s proposed resolution requests educational therapy, compensatory education and other appropriate relief. 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 resolution stated in Student’s amended complaint is not well-defined. However, Student has met the statutorily required standard of stating a resolution to the extent known and available to her at the time.

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).

ORDER

1. The amended 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: December 21, 2010

/s/

MICHAEL G. BARTH
Administrative Law Judge
Office of Administrative Hearings