

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

LOS NIETOS SCHOOL DISTRICT,
WHITTIER AREA COOPERATIVE
SPECIAL EDUCATION PROGRAM, AND
COVINA VALLEY UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010120159

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On December 3, 2010, Student's parents on behalf of Student (Student) filed a due process hearing request¹ (complaint) naming Los Nietos School District (LNSD), Whittier Area Cooperative Special Education Program (WACSEP) and Covina Valley Unified School District.

On December 28, 2010, WACSEP and LNSD filed a Notice of Insufficiency (NOI) as to Student's complaint.²

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 Although the NOI was filed more than 15 days after receipt of the complaint, the moving papers included a fax transmittal page showing that the parties had attempted to file the NOI with the Office of Administrative Hearings on December 17, 2010, within the 15 day time limit for filing of an NOI. (20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).)

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.³ 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.⁴ 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.⁵

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁶ 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.⁷ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁸

³ 20 U.S.C. § 1415(b) & (c).

⁴ 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

⁵ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁶ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁷ *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.].

⁸ 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).

DISCUSSION

The facts alleged in Student's complaint are sufficient to put the parties on notice of the issues forming the basis of the complaint. Student's complaint alleges that the respondents failed to offer Student placement, services, modifications and accommodations that addressed her preferred mode of communication as an oral deaf child with a cochlear implant. The factual allegations go on to explain the problems with the placement and services offered (such as improper student to teacher ratio and use of sign language). The second issue alleges that the respondents failed to consider certain factors specified in federal and state education law in developing Student's individualized education program (IEP).

Those two issues are clear and straightforward – the first issue alleges a substantive denial of FAPE based on improper placement and services, and the second issue alleges a procedural violation based on an alleged failure to comply with certain code sections.

There is some ambiguity in the factual allegations surrounding those two issues. For example, in issue two there is a passing mention of problems with goals, but no allegations as to the nature of those problems. Likewise, the earlier facts mention the failure to have a general education teacher at various IEP meetings, but Student alleges no procedural issues related to the composition of the IEP team. However, those ambiguities do not make the two issues alleged insufficient. Apparently those are just background facts and not part of Student's claims of denial of FAPE.⁹

The NOI also contends that Student's proposed resolutions are vague and not connected to the facts alleged. 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).) Student's proposed resolutions are clear and straightforward. They request placement at an NPS, reimbursement for the parents' costs, and compensatory education. There is no confusion about what Student is seeking.

The proposed resolutions also contain a "catch-all" clause requesting additional remedies which may be found appropriate by the administrative law judge. Remedies for a denial of FAPE are a matter within the discretion of the court, so including such a catch-all clause does not create ambiguity.

Student's due process complaint is sufficient as alleged.

⁹ If Student intends to allege a denial of FAPE based on problems with the composition of the IEP team, improper goals and objectives, or any of the other things mentioned in passing in the facts in the complaint, Student should seek leave to amend the complaint to add issues based on those facts. As the complaint is currently worded, those matters would not be at issue at the hearing.

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: December 30, 2010

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings