

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT, LOS ANGELES COUNTY
OFFICE OF EDUCATION AND
CALIFORNIA DEPARTMENT OF
EDUCATION.

OAH CASE NO. 2011030120

ORDER DETERMINING
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On February 26, 2011 Student filed a Due Process Hearing Request¹ (complaint) naming the Los Angeles County Office of Education (LACOE), Los Angeles Unified School District (LAUSD), and the California Department of Education (CDE) as respondents.

On March 9, 2011, LAUSD timely filed a Notice of Insufficiency (NOI) 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

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).

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 complaint are sufficient to put the District on notice of the issues forming the basis of the complaint. 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, mediation, and hearing.

Student alleges that she was provided IEPs and special education services by LAUSD until 2004, when she became involved in drugs and alcohol. Since 2004, she did not receive any IEPs or education until she was incarcerated in approximately May 2009. At that time, LACOE provided special education services to Student through an IEP. On December 28, 2009, Los Angeles County Department of Mental Health (DMH) recommended that Student be placed in a residential treatment center (RTC) pursuant to an AB3632 assessment. A June 2010 OAH decision directed LACOE, as Student’s LEA, to implement the IEP team recommendation to place Student in an RTC. LACOE did and, in July, 2010, Student was transported and placed at the RTC in Texas.

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 further alleges that she is now 19 years of age and is not a conserved individual. She requests that OAH determine the “district of residence” for purposes of the provision of FAPE.

In its NOI, LAUSD cites Education Code, Section 56041, which establishes the standards for determining the district of residence responsible for special education and related services to a pupil between the 18 and 22 years of age and whose IEP team determined special education services would be required beyond pupil’s 18th birthday. For a nonconserved pupil, the last district of residence in effect prior to the pupil’s attaining the age of majority shall become and remain as the responsible local educational agency, as long as and until the parent or parents relocate to a new district of residence. At that time, the new district of residence shall become the responsible local educational agency.

LAUSD contends that it is not given sufficient notice of Student’s contentions because Student does not separately and specifically allege the residency of her parent or parents. However, Student alleges she is nonconserved and that LAUSD was her prior district of residence before she turned 18 years of age. Since the controlling statute uses the parents’ residence as a factor in determining district of residence, the Student’s assertion that LAUSD is a district of residence sufficiently pleads that her parent or parents are within LAUSD. This fact shall be determined upon the evidence at hearing. The complaint provides LAUSD with statutorily sufficient information to know how to prepare for the hearing and how to participate in resolution sessions 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.

Dated: March 09, 2011

/s/

CLIFFORD H WOOSLEY
Administrative Law Judge
Office of Administrative Hearings