BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT on behalf of STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT AND LOS ANGELES COUNTY OFFICE OF EDUCATION.	OAH CASE NO. 2009120918 DETERMINATION OF INSUFFICIENCY OF DUE PROCESS COMPLAINT

On December 22, 2009, Student filed a Due Process Hearing Request[1] (complaint) naming Los Angeles County Office of Education and Los Angeles Unified School District (District) as the respondents.

On January 26, 2010, District filed a Notice of Insufficiency (NOI) as to Student's complaint.

APPLICABLE LAW

The respondent to a due process hearing request has the right to challenge the sufficiency of the complaint. (20 U.S.C. § 1415(b) & (c).)[2] The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of section 1415(b)(7)(A).

The complaint is deemed sufficient unless the respondent notifies the due process hearing officer (OAH) and the other party in writing, within 15 days of receiving the complaint, that the respondent believes the complaint has not met the notice requirements. (§ 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).)

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.

[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] All statutory citations are to Title 20 United States Code unless otherwise noted.

(§1415(b)(7)(A)(ii)(III) & (IV).) The determination of whether a complaint is sufficient is made by looking at the face of the complaint. (§1415(c)(2)(D).) In general, fundamental principles of due process entitle the respondent to know the nature of the allegations being made against it, such that respondent may prepare a defense. (*Tadano v. Manney* (9th Cir. 1947) 160 F.2d 665, 667; *Hornsby v. Allen* (5th Cir. 1964) 326 F.2d 605, 608.)

DISCUSSION

Student's complaint was filed on December 22, 2009. District indicates in its NOI that it did not receive the complaint until almost one month later, on January 21, 2010. District's NOI was filed with OAH and served on January 26, 2010, which is within 15 days of its receipt of the complaint. Therefore District's NOI is timely.

Student's complaint alleges one problem/complaint, as follows: "LACOE refused to say Steven needs a small therapeutic setting." It alleges one proposed resolution which simply says: "insert language."

The complaint is insufficiently pled. It fails to provide respondents with the required notice of the facts relating to the problem. Although the IDEA does not require that the person or entity filing a claim plead facts with particularity, the requirement is, in essence, to file a short and plain statement of the cause of action and the grounds upon which it rests. In other words, the claim must answer the questions who (i.e. the district), what (what are you claiming), how (what in general are the salient facts regarding your claim/the grounds) and when (timeframe). A respondent is entitled, with respect to each issue or problem, to know sufficient facts to prepare a response, prepare for a resolution meeting, or prepare a defense for hearing.

For example, the complaint is unclear as to whether the intended respondents are Los Angeles Unified School District, Los Angeles County Office of Education, or both, and what each party is alleged to have done. For these reasons, the complaint does not comply with the requirements of Section 1415(b)(7).

A complaint is also required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (§1415(b)(7)(A)(ii)(IV).) The proposed resolution stated in Student's complaint is not clear. It does not meet the statutorily required standard of stating a resolution to the extent known and available at the time.

ORDER

1. Pursuant to section 1415(c)(2)(D), Student's complaint is insufficiently pled, and District's notice of insufficiency is granted.

2. Pursuant to section 1415(c)(2)(E)(i)(II), Student shall be permitted to file an amended complaint.[3]

3. A parent who is not represented by an attorney may request that the Office of Administrative Hearings provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. (See Ed. Code, § 56505.) Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

4. The amended complaint shall comply with the requirements of section 1415(b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.

5. If Student fails to file a timely amended complaint, the complaint will be dismissed.

6. All dates previously set in this matter are vacated.

Dated: January 28, 2010

/s/

JUNE R LEHRMAN
Administrative Law Judge
Office of Administrative Hearings

[3] The filing of an amended complaint will restart the applicable timelines for a due process hearing.