BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT on behalf of STUDENT, v. WINDSOR UNIFIED S.D..	OAH CASE NO. 2010020834 DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On February 16, 2010 Parent on behalf of Student (Student) filed a Due Process Hearing Request[1] (complaint) naming the Windsor Unified School District (District) as respondent.

On March 3, 2010, the District filed a Notice of Insufficiency (NOI) as to Student's complaint. On February 25, 2010, the District had filed its Response to Due Process Complaint.

In her complaint, Student alleges four issues which took place during the time period of August 27, 2009 to the date of filing. In her first issue, Student alleges that she has been denied a free appropriate public education (FAPE) because the District has failed to include requested accommodations and curriculum modifications to Student's Individual Education Programs (IEP) during the time period specified. In issue two, Student alleges that the District has denied Student a FAPE because the IEPs of October 19, 2009 and January 22, 2010 fail to include appropriate accommodations and curriculum modifications. In issue three, Student alleges that it failed to provide prior written notice in regards to its refusal to include in the IEPs from August 27, 2009 through the date of filing, accommodations and curriculum modifications recommended by Parent. In issue four, Student alleges that Parent's right to participate in the IEP process has been breached by the District's refusal to write goals, list modalities to be utilized in providing services, and details of the program being offered at IEP meetings during the time period of August 27, 2009 through the date of filing.

APPLICABLE LAW

[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).

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 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 named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.[3]

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint."[4] 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.[5] Whether the complaint is sufficient is a matter within the sound discretion of the ALJ.[6]

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 the District to respond to the complaint and participate in a resolution session and mediation. On February 25, 2010, prior to the filing of its NOI, the District filed its Response to Due Process Complaint.

Therefore, Student's statement of the four claims is sufficient.

ORDER

1. The complaint is sufficient under section 1415(b)(7)(A)(ii).

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[2] 20 U.S.C. § 1415(b) & (c).

[3] 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV)

[4] Sen. Rep. No. 108-185, *supra*, at p. 34.

[5] *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.].

[6] 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).

2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: March 04, 2010

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings