

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS on behalf of STUDENT,

v.

SANTA MONICA-MALIBU UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2010030567

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On March 04, 2010, Parents on behalf of Student (herein collectively referred to as Student) filed a Due Process Hearing Request¹ (complaint) naming the Santa Monica-Malibu Unified School District (District).

On March 18, 2010, the District timely filed a Notice of Insufficiency (NOI) as to Student's complaint. For the reasons elaborated below, Student's complaint meets the legal standard of sufficiency for a due process 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 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.⁴

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)

⁴ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

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 ALJ.⁷

DISCUSSION

Student’s complaint contains two issues, along with an initial detailed factual background section which precedes the discussion of the specific issues in dispute. Although the issues themselves are not as clearly delineated as they could be, when reading the issues in conjunction with the factual background portion of the complaint, the issues put forth by Student are clear enough to put the District on notice of what Student believes to be the reasons for her allegations that the District denied her a free appropriate public education (FAPE). In issue one, Student basically alleges she was procedurally and substantively denied a FAPE because the District discontinued providing her with the services of one of her auditory verbal therapists over the objections of Student’s Parents. In issue two, Student basically alleges that the District failed to maintain her placement in the least restrictive environment and failed to adequately address her specific learning disability. 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.

Therefore, Student’s statement of the claims is sufficient.

ORDER

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

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).

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

Dated: March 30, 2010

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings