

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

LOS ANGELES UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2010041222

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On April 23, 2010 Los Angeles Unified School District (District) filed a Due Process Hearing Request¹ (complaint) naming (Student).

On May 3, 2010, Student filed a Notice of Insufficiency (NOI) as to the District'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 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

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint."⁵ The pleading

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.

⁵ Sen. Rep. No. 108-185, *supra*, at p. 34.

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

The District's complaint alleges one issue in the complaint, part of which is sufficient and part of which is insufficient. The issue is discussed below.

In response to Student's request for Independent Expert Evaluations (IEE), the District alleges that its audiology, psychoeducational, and occupational therapy assessments are appropriate, and therefore request a finding from OAH affirming the assessments as appropriate.

While the District's complaint is sufficient with regard to the audiology and occupational therapy assessments, the complaint does not provide factual information to suggest that Student has challenged the psychoeducational assessment. Therefore, that portion of the District's complaint which seeks affirmation of the psychoeducational evaluation is deleted from the complaint.

ORDER

1. The District's complaint is sufficient under section 1415(b)(7)(A)(ii), subject to the deletion of the request for findings and relief arising from the psychoeducational assessment.
2. The District's inclusion of the psychoeducational assessment in its complaint is insufficiently pled under section 1415(c)(2)(D).
3. The District shall be permitted to file an amended complaint under section 1415(c)(2)(E)(i)(II).⁸
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.

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).

⁸ The filing of an amended complaint will restart the applicable timelines for a due process hearing.

5. If the District fails to file a timely amended complaint, the hearing shall proceed only the remaining portion of the District's complaint requesting findings regarding the audiology and occupational therapy assessments.

Dated: May 05, 2010

/s/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings