

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

WESTSIDE UNION SCHOOL DISTRICT.

OAH CASE NO. 2010060395

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS HEARING
REQUEST

On June 10, 2010, Student filed a Due Process Hearing Request naming Westside Union School District (District) as the respondent. Student's request alleged that he was in special education, was a regional center client, and would be enrolled in new school district for high school as of June of 2010. The only "problem" identified is: "we disagree [with] the denial decision of the District" as set for the in an attached letter from the District dated May 11, 2010. The May 11, 2010 is a prior written notice letter stating that the District denied parent's request for one hour per week of instruction in American Sign Language (ASL). The due process hearing request does not propose a "resolution" to the problem." On June 14, 2010, District timely filed a Notice of Insufficiency (NOI). As discussed below, the due process hearing request is insufficient, but Student will have an opportunity to amend it.

The named parties to a due process hearing request have the right to challenge the sufficiency of the due process hearing request.¹ The party filing the due process hearing request is not entitled to a hearing unless the due process hearing request meets the requirements of section 1415(b)(7)(A).

A due process hearing request 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.² These requirements prevent vague and confusing due process hearing requests, 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 due process hearing request provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint."⁴

¹ 20 U.S.C. § 1415(b) & (c). All subsequent statutory references are to title 20, United States Code.

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

³ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

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

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 due process hearing request is sufficient is a matter within the sound discretion of the ALJ.⁶

Here, Student's request for a due process hearing fails to include any facts relating to the request for ASL instruction. Student needs to include some explanation about his unique needs and why ASL is required for special education. In addition, the request for a due process hearing does not include a proposed resolution. In other words, Student needs to state what it is he is seeking at hearing, such as an amount of services for a certain period of time. This is important because Student alleges that he is changing school districts for high school. In sum, because Student needs to provide more facts about the ASL services and propose a resolution to the problem, the due process hearing request is not sufficient.

ORDER

1. Student's due process hearing request is not sufficient.
2. Student may file an amended due process hearing request within 14 days of the date of this order that includes facts about why Student needs ASL and a proposed resolution. Parents are advised that under Education Code section 56505, 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 due process hearing request. Parents are encouraged to contact OAH for assistance in amending their due process hearing request.
3. If Student fails to file a timely amended due process hearing request, the action will be dismissed.
4. All dates previously set in this matter are vacated.

Dated: June 17, 2010

/s/

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings

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).