

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ALAMITOS UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010100448

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On October 4, 2010, Student filed a Due Process Hearing Request¹ (complaint) naming the Los Alamitos Unified School District (District). October 14, 2010, District filed a Notice of Insufficiency (NOI) to Student'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 title 20 United States Code 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

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)

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 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 Administrative Law Judge.⁷

DISCUSSION

Student’s complaint states three issues. Regarding the first issue, Student contends that he was denied a FAPE from October 2008 to the present because District failed to provide a placement and program wherein Student could make appropriate progress. The body of the complaint, following the identified issue, sets forth facts specifying that Student was denied a FAPE in the areas of academics and social-emotional functioning. Student’s first issue identifies a problem and provides facts relating to that problem which are sufficient to put District on notice of the problems forming the basis of the issue and to permit District to respond to the complaint and participate in a resolution session and mediation. Accordingly, Student’s first issue is legally sufficient.

Regarding the second issue, Student alleges that he was denied a FAPE because the speech and language services provided by District from October 2008 to the present were inappropriate. Student sets forth facts relating to the identified problem describing how Student has allegedly failed to make meaningful progress in his speech and language skills. The facts alleged in Student’s second issue are sufficient to put District on notice of the problems forming the basis of the issue and to permit District to respond to the complaint and

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.

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).

participate in a resolution session and mediation. Accordingly, Student's second issue is legally sufficient.

Finally, on the third issue, Student contends that he was denied a FAPE because District failed to provide him with appropriate assistive technology (AT) from October 2008 to the present. Student sets forth facts relating to the alleged problem that detail assessment report and individualized education program team meeting discussions regarding Student's alleged need for AT. Student's complaint adequately identifies the issue and related facts to permit District to respond to the complaint and participate in a resolution session and mediation. Thus, Student's third issue is legally sufficient.

Student's proposed resolutions set forth specific remedies for each identified issue which include among other things, compensatory education, , speech and language services, AT support, a transition plan, extended school year services and a functional analysis assessment. A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (20 U.S.C. §1415(b)(7)(A)(ii)(IV).) Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

ORDER

1. The complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: October 20, 2010

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings