

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

DENAIR UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2011071075

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On July 29, 2011, Parents on behalf of Student (Student) filed a Due Process Hearing Request¹ (complaint) naming the Denair Unified School District (District) as respondent.

On August 15, 2011, the District filed a Notice of Insufficiency (NOI) and Motion to Dismiss (MTD) as to Student's complaint. The District's sole ground for the NOI is that Student does not live within the geographical boundaries of the District.² This order only deals with the District's NOI and does not apply to the District's MTD. Student has until August 18, 2011, to file an opposition to the District's MTD.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.³ 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).

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 Student alleges that he was a student with the District attending Denair High School in fall 2009.

³ 20 U.S.C. § 1415(b) & (c).

The complaint is deemed sufficient unless a party notifies the Office of Administrative Hearings and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements.⁴

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.⁵ 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.⁶

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁷ 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.⁸ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁹ Since special education law does not provide a process for a summary judgment, an NOI can not be used for that purpose.

⁴ 20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).

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

⁶ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁷ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁸ *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.].

⁹ 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).

DISCUSSION

Student's complaint was filed on July 29, 2011. The District was served the complaint by fax on July 29, 2011. The 15 day time to file an NOI expired on August 13, 2011, which was a Saturday. Because the time to file would expire on a Saturday, it is extended to the next business day which is August 15, 2011. Additionally, Student's counsel was given an extension of time to file the District's response until August 22, 2011 because District's counsel had been on vacation (see Declaration of Peter Surges which is attached to the NOI and MTD). Therefore, the NOI was timely filed.

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 clearly identifies the issues and pleads specific related facts about the problem to permit the District to respond to the complaint and participate in a resolution session and mediation. The District's argument that Student does not live within the boundaries of the District is an affirmative defense to Student's complaint and is not properly the subject of an NOI.

Therefore, Student's complaint is sufficient.

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: August 16, 2011

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings