

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LYNWOOD UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012090295

ORDER DENYING NOTICE OF
INSUFFICIENCY

On September 10, 2012, Student through his attorney filed a request for mediation and due process¹ (complaint) naming Lynwood Unified School District (District) as respondent. District timely filed a response to the complaint and notice of insufficiency (NOI) on September 20, 2012. For the reasons discussed below, the NOI is denied.

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 AND ORDER

Student’s complaint alleges that he lives within the District and is enrolled in the fifth grade at Roosevelt Elementary School. He is eligible for special education benefits as a result of his diagnosis of Autism and speech or language impairment. He is enrolled in a special day class and receives speech therapy and occupational therapy as related services. Student also alleges that his March 12, 2012 individual education program (IEP) failed to give him adequate speech therapy and occupational therapy related services, that his last IEP team found that he has not made meaningful academic progress in the areas of reading, writing and mathematics, that his communication skills are very immature, and that he “never” meets most of his goals. Student’s complaint includes four specific proposed resolutions. One can therefore infer from the above-stated facts that the issues in the complaint are that District has denied Student a FAPE by failing to appropriately address his unique needs in the above-described areas with adequate services and academic supports.

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).

The facts alleged in the complaint are sufficient to put the District on notice of the issues forming the basis of the complaint. The complaint identifies the issues and adequate related facts about the problem to permit District to respond to the complaint and participate a resolution session, mediation and a due process hearing. Therefore, Student's complaint is sufficient, and District's notice of insufficiency is denied. All previously scheduled dates in this matter shall remain unless otherwise ordered.

IT IS SO ORDERED.

Dated: September 21, 2012

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings