BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2010060868 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On June 17, 2010, Student filed a Due Process Hearing Request[1] (complaint) naming Los Angeles Unified School District (District) as the respondent.

On July 2, 2010, District filed a timely Notice of Insufficiency as 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 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]

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[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.

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 ALJ.[7]

DISCUSSION

Student's complaint alleges five problems/issues and three proposed resolutions. All are insufficiently pled as discussed below.

Issue number one relates solely to Mother's convenience with regard to her work schedule. This is not 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 FAPE to the child.

Issue number two states that Mother does "not like the place I was sent to because I do not think it is good." This appears to relate to a placement that District has proposed for Student. However it is unclear what placement was proposed, for what school year, and why Mother believes the placement is not appropriate for Student. Further facts relating to the problem are necessary to provide District with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.

Issue number three states that Mother "like[s] the facilities (school) and staff that I already know." This may relate to Student's current placement. However this is unclear, and the complaint states no facts necessary to provide District with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.

Issue number four relates to family arrangements concerning emergency contacts. It is unclear how this relates to Student's education.

Issue number five states that Student's brother is "in this very facility, and it is always easier for me to bring them together." This relates solely to Mother's convenience, and is not a description of the nature of the problem of the child relating to the proposed initiation or

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[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).

change concerning the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child.

The complaint states three proposed resolutions, asking that Student (1) be allowed to go on with his regular programs, (2) continue in his current placement, and (3) be "allowed to have additional programs." No facts are stated pertaining to the additional programs being requested.

Student has failed to state sufficient facts supporting any of his issues. He has failed to state all his proposed resolutions of the problem to the extent known and available to him at the time. For these reasons, the complaint is insufficient.

ORDER

1. Student's complaint is insufficiently pled under section 1415(c)(2)(D).

2. Student shall be permitted to file an amended complaint under section 1415(c)(2)(E)(i)(II).[8]

3. 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 complaint. (See Ed. Code, § 56505.) Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

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.

5. If Student fails to file a timely amended complaint, the complaint will be dismissed.

6. All dates previously set in this matter are vacated.

Dated: July 6, 2010

/s/

JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings

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