

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LAS VIRGENES UNIFIED SCHOOL  
DISTRICT and VENTURA COUNTY  
SPECIAL EDUCATION LOCAL PLAN  
AREA.

OAH Case No. 2016020876

ORDER DETERMINING DUE  
PROCESS COMPLAINT  
INSUFFICIENT

On February 18, 2016, Student filed a Due Process Hearing Request<sup>1</sup> (complaint) with the Office of Administrative Hearings naming the Las Virgenes Unified School District and the Ventura County Special Education Local Plan Area. On March 3, 2016, Las Virgenes timely filed a 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. (20 U.S.C. § 1415(b) & (c).) 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 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. (20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).) 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. (See H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.)

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<sup>1</sup> A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 U.S.C. section 1415(b)(7)(A).

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.” (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. (*Alexandra R. ex rel. Burke v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, CIV. 06-CV-0215-JL) 2009 WL 2957991[nonpub. opn.]; *Escambia County Bd. 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, 8:04CV2657T24EAJ) 2005 WL 2850076 [nonpub. opn.]; but cf. *M.S.-G v. Lenape Regional High School Dist. Bd. of Educ.* (3d Cir. 2009) 306 Fed.Appx. 772, 775 [nonpub. opn.].) Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge. (*Assistance to States for the Educ. of Children with Disabilities & Preschool Grants for Children with Disabilities* (Aug. 14, 2006) 71 FR 46,540-46541, 46699.)

## DISCUSSION

Student’s complaint contains one issue which states “Student has not been prepared to participate in extracurricular activity and has not been allowed access to extracurricular activity.” Student’s complaint contains no additional facts or explanation of his issue. He does not state that he is a child with a disability, does not state whether he has been provided an individualized education program by Las Virgenes, and does not state any facts surrounding Las Virgenes’s alleged denial to him of access to extracurricular activities. For example, Student fails to state in which extracurricular activities he wanted to participate, when and how Las Virgenes knew of his desire to participate, and when and how his participation was denied. Student fails to state how the school district should have prepared him to participate in extracurricular activities, and how, if he was denied this opportunity, the denial prevented him from receiving a free appropriate public education.

As presently written, Student’s complaint is insufficiently pled in that it fails to provide Las Virgenes with the required notice of a description of the problem and the facts relating to the problem, thus impeding Las Virgenes’s ability to participate in mediation or properly respond to Student’s allegations.

## MEDIATOR ASSISTANCE FOR NON-REPRESENTED PARENTS

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.<sup>2</sup> Student’s parent is encouraged to contact OAH for assistance if he intends to amend his due process hearing request.

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<sup>2</sup> Ed. Code, § 56505.

ORDER

1. Student's complaint is insufficiently pled under section title 20 United States Code 1415(c)(2)(D).
2. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).<sup>3</sup>
3. The amended complaint shall comply with the requirements of title 20 U.S.C. section 1415(b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.
4. If Student fails to file a timely amended complaint, the complaint will be dismissed as to Las Virgenes, and will proceed solely against the Ventura County Special Education Local Plan Area.

DATE: March 9, 2016

DocuSigned by:

*Darrell Lepkowsky*

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DARRELL LEPKOWSKY  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>3</sup> The filing of an amended complaint will restart the applicable timelines for a due process hearing.