BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2013070793
v.	ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT
POWAY UNIFIED SCHOOL DISTRICT.	

On July 17, 2013 Niesla Frerich (Student) filed a Due Process Hearing and Mediation Request[1] (complaint) naming Poway Unified School District (District).

On July 22, 2013, Poway's counsel timely filed a Notice of Insufficiency (NOI) 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 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 alleges that she has had the same math concept goal for five years, and tried all different approaches suggested by the school with little improvement over the same five years. Student's proposed resolution is to continue working with a non-public agency (NPA) with whom she has been working with for almost seven years because the NPA made a significant improvement in her life. District's NOI was timely filed and considered.

The facts alleged in complaint are sufficient to put the District on notice of the issue stated below, and provided adequate related facts about the problem to permit the District to respond to the complaint, and participate in a resolution session and mediation.

Student has sufficiently alleged the following issue: Whether Student was denied a free appropriate public education because District's math goals and instructional methods to teach math were inappropriate from May 17, 2011 to May 17, 2013. As a remedy, Student wants NPA services. If Student intends to proceed on any other issue, Student will need to seek leave to amend the complaint.

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[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).

ORDER

1. The complaint is deemed sufficiently pled under section Title 20 United States Code 1415(c)(2)(C) and Education Code section 56502, subdivision (d)(1), solely as to the issue stated above. If Student wishes to proceed on any other issue, Student will need to seek leave to amend the complaint.

2. All mediation, prehearing conference and hearing dates set in this matter are confirmed.

Dated: July 23, 2013

/s/

SABRINA KONG
Administrative Law Judge
Office of Administrative Hearings