BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENTS ON BEHALF OF STUDENT,	OAH CASE NO. 2013050611
v.	ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT
SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT.	

On May 17, 2013 Parents on behalf of Student (Student) filed a Due Process Hearing Request[1] (complaint) naming the Santa Monica-Malibu Unified School District (District) as respondent.

On May 28, 2013, the District filed a Response to Complaint which included a Notice of Insufficiency (NOI) as to Student's complaint. The District contends that the complaint does not identify specific allegations against the District or provide supporting facts.

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

[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).

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]

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

In her complaint, Student alleges that she is enrolled at a District high school but presently attends a residential treatment center (RTC) because of academic, behavioral and emotional difficulties. Since middle school, Student has been diagnosed with learning disabilities, attention deficit hyperactivity disorder, and bipolar disorder. The District conducted a psycho-educational evaluation for purposes of determining special education eligibility. Student alleges that this evaluation "did not fully evaluate Student and provided only certain accommodations under a 504 plan." In fall 2012, Student's problems continued, but the District failed to conduct a special education evaluation. On February 19, 2013, Student's parents (Parents) requested an IEP meeting to revisit the issue of special education eligibility. The District refused Parent's request. As a result of the District's failure to properly find Student eligible for special education, Parents were compelled to place Student at a day treatment program and a RTC.

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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).

Student contends that since May 11, 2011, Student has been denied a free appropriate public education (FAPE) because the District failed to (1) properly assess Student; (2) to timely convene an IEP meeting upon Parent's request and find Student eligible find Student eligible for special education; and (3) to offer Student a FAPE in the least restrictive environment.

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 identifies the issues and adequate related facts about the problem to permit the District to respond to the complaint and participate in a resolution session and mediation.

Therefore, Student's complaint is sufficient.

ORDER

1. The complaint is deemed sufficient under Title 20 United States Code section 1415(c)(2)(C) and Education Code section 56502, subdivision (d)(1).

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

Dated: May 30, 2013

/s/
ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings