BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ESCONDIDO UNION SCHOOL DISTRICT.	OAH Case No. 2014120197 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On November 25, 2014, Student's parent on behalf of Student filed a due process hearing request[1] (complaint) naming the Escondido Union School District.

On December 16, 2014, Escondido filed a notice of insufficiency as to Student's complaint. Escondido represents that it did not receive the complaint until December 1, 2014, so its NOI was timely filed.

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 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

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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).

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

The facts alleged in Student's complaint are sufficient to put Escondido on notice of the issues forming the basis of the complaint. Escondido does not challenge the facts or issues, but instead contends that it is improper for Student to request an independent educational evaluation as one of Student's proposed remedies. Escondido believes that Student was required to go through the procedure of objecting to a district assessment and requesting an independent evaluation before Student could request an independent evaluation as a remedy in Student's due process case.

Escondido is confusing the law regarding requested remedies in a due process case with the law regarding a parent's ability to request an independent evaluation from a school district when a parent disagrees with a district assessment. The two are not the same. The remedy in a due process case is a matter within the discretion of the administrative law judge hearing the case. While that equitable discretion may be influenced by the actions of the parties, it is not fettered by a parent's failure to formally object to an assessment and request

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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).

an independent assessment from a school district. Accordingly, Student's complaint is sufficiently pled.

ORDER

1. The complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).

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

DATE: December 17, 2014

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings