BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENTS ON BEHALF OF STUDENT,	OAH Case No. 2016061311
v.	ORDER DETERMINING DUE PROCESS COMPLAINT TO BE INSUFFICIENT
SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT.	

On June 24, 2016, Parents on behalf of Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming the Santa Monica-Malibu Unified School District. On July 8, 2016, District timely filed a Notice of Insufficiency as to all issues raised in 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.)

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,

[1] 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).

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 raises four issues in his complaint. All are insufficient as presently stated.

In issue one, Student alleges that District failed to adequately assess him before offering him a placement in a special day class. Student contends that District did not know him enough to make the recommendation and that the testing was done the day before his individualized education program meeting.

Student fails to state what testing was conducted by District, when the testing occurred, or what date his IEP team meeting took place. Student fails to state why the testing was inadequate and why the fact that the testing occurred the day before his IEP team meeting occurred resulted in a denial to him of a free appropriate public education.

In issue two, Student states that District placed him in the most restrictive environment it could. Student contends that he is entitled to be placed in the least restrictive environment. Issue two has many of the same problems as does issue one. Student did not provide any information as to whether District placed him in a restrictive environment pursuant to an IEP, when that meeting took place if it was held, what the scope of the District offer was, and why Student believes that it was too restrictive. Student fails also to describe what he believes to be his least restrictive environment and why he believes that to be so.

In issue three Student states that he does not understand why District placed him in a special day class because District testing, which was done the day before his IEP team meeting, indicated that Student was in the average to above average range. Student then states that one of his IEP team members arrived late to his IEP team meeting but still made recommendations for placement and services. Student again fails to state when the IEP team meeting took place, why the testing was inadequate, what the full recommendations for placement and services were, or how the timing of the testing denied Student a FAPE. Additionally, Student fails to define in what areas he tested in the average to above average range and how Student believes that testing should have changed District's placement decisions.

Issue four of Student's complaint states that District failed to address Parent's requests to place Student in general education with a one-on-one aide. However, Student fails to state when the IEP team meeting occurred, what it was that Parent requested, when any further discussion took place, and the extent of District's response to Parent's request for a specific placement. Issue four then continues with a request by Student that District provide him with a one-on-one aide, presumably in a general education classroom. The issue fails to state why Student believes he requires placement in a general education class with an aide and why District's offer of placement is not his least restrictive environment.

Student's four issues fail to put District on notice of the specific reasons Student believes District denied him a FAPE. The issues fail to provide District with the required notice of a description of each problem and the facts relating to each problem that would allow District to participate in resolution and mediation sessions, and to defend itself at hearing if necessary. For these reasons, Student's four issues are insufficient as presently pled.

Student's complaint also includes four proposed resolutions. Primarily, Student requests that District re-assess him, that District place him in a less restrictive environment, along with a one-on-one aide. Although Student's resolutions are not all that well-defined, Student has met the statutorily required standard of stating a resolution to the extent known and available to him as of the time he filed his complaint.

MEDIATOR ASSISTANCE FOR NON-REPRESENTED PARENTS

A parent who is not represented by an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. (Ed. Code, § 56505.) Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

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).[2]

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.

---

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

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

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

DATE: July 11, 2016

DocuSigned by:
Darrell Lepkowsky
A228F8201132499...

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings