BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT.	OAH Case No. 2015100796 ORDER GRANTING NOTICE OF INSUFFICIENCY

On October 20, 2015, Parent on behalf of Student filed with the Office of Administrative Hearings a Due Process Hearing Request[1] naming the Santa Monica-Malibu Unified School District.

On October 28, 2015, District timely submitted 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.[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

Student's complaint alleges five issues. Issue One describes disjointed facts regarding Student's mother's medical problems and a disagreement regarding unspecified testing, yet fails to identify a specific problem or action by District which resulted in a denial of a free appropriate public education, or when such conduct occurred. As alleged, the issue is overly vague and fails to provide enough information to permit District to respond to the claim.

Student's Issues Two through Five are also insufficiently pled. Issue Two requests an unspecified change to an unspecified Individual Education Program, yet fails to state a claim. Issue Three complains that Mother has had difficulty understanding the process that District has used in the development of Student's IEP's, but fails to describe specific conduct that resulted in a denial of a free appropriate public education, or when such conduct occurred. In Issue Four, Student complains that District has been "devious" and "unhelpful" towards his parents, yet fails to state a specific claim. Student's Issue Five states only that District

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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).

failed to respond to a letter dated September 1, 2015. Student fails to specify what actions taken by District resulted in the denial of a free appropriate public education.

Student's complaint fails to identify the issues and adequate related facts about the problem to permit District to respond to the complaint and participate in a resolution session and mediation. Therefore, Student's complaint is insufficient.

District's Notice of Insufficiency is granted with leave to amend. If Student amends, the complaint shall include specific facts describing Student's eligibility for special education and his unique needs, when the actions complained of occurred, what occurred, and how and for what time period those actions denied Student access to a free appropriate public education.

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.[8] 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).[9]

3. The amended complaint shall comply with the requirements of title 20 United States Code 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 timely file an amended complaint, the complaint will be dismissed.

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8 Ed. Code, § 56505.

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

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

IT IS SO ORDERED.

DATE: October 29, 2015

/S/

PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings