BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. BEVERLY HILLS UNIFIED SCHOOL DISTRICT.	OAH Case No. 2015031191 ORDER DENYING DISTRICT'S NOTICE OF INSUFFICIENCY

On March 23, 2015, Parents on behalf of Student, acting in propria persona, filed a request for mediation only[1] naming the Beverly Hills Unified School District. Student's complaint only requests mediation; he did not request a due process hearing.

On April 10, 2015, District filed 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).

The complaint is deemed sufficient unless a party notifies the Office of Administrative Hearings and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements.[3]

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

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[1] Education Code, section 56500.3.

[2] 20 U.S.C. § 1415(b) & (c).

[3] 20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).

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.[4] 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.[5]

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint."[6] 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.[7] Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.[8]

DISCUSSION

An NOI is appropriate to challenge a request for a due process hearing, filed pursuant to Education Code, sections 56501 and 56502, to determine the sufficiency of the allegations to determine if the opposing party has notice of the issues forming the basis of the complaint to respond to the complaint and participate in a resolution session and mediation. However, in this case, Student does not request a hearing, but rather seeks to mediate the dispute with District without going to hearing, as permitted by Education Code, section 56500.3. Education Code, section 56500.3, does not contain a mechanism for a party to challenge the sufficiency of a mediation only request. Therefore, District's NOI is denied as no authority exists for such a request with a mediation only request.

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[4] 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

[5] See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

[6] Sen. Rep. No. 108-185, *supra*, at p. 34.

[7] *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.].

[8] 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. District's NOI is denied as Student has not requested a due process hearing.

2. District shall promptly notify OAH of whether it intends to participate in mediation with Student, along with a proposed mutually agreeable date for mediation, set on a Tuesday, Wednesday, or Thursday.[9]

DATE: April 10, 2015

/s/
DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings

[9] District cancelled the original mediation date as it was scheduled during its spring break.