BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT, PALISADES CHARTER HIGH SCHOOL, AND LOS ANGELES COUNTY OFFICE OF EDUCATION.	OAH CASE NO. 2013060784 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On June 14, 2013, Student filed a Due Process Hearing Request[1] (complaint) naming the Los Angeles Unified School District, Palisades Charter High School, and the Los Angeles County Office of Education (LACOE).

On June 21, 2013, LACOE timely filed a Notice of Insufficiency (NOI) 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 (FAPE) to the child; (2) facts relating to the problem; and (3) a proposed

[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).

resolution of the problem to the extent known and available to the party at the time.[3] 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.[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 various claims concerning her individualized education plan (IEP) from April 4, 2011. Student contends that the placement offered in the IEP at Palisades Charter High School was inappropriate for her. Rather, Student contends that she should have been placed at Westview, which is a non-public school. Student also disagrees with a behavior support plan developed for her in conjunction with her IEP. Student indicates in her complaint that she has been attending Westview outside of the IEP process. Her proposed resolution is that Los Angeles Unified School District place Student at Westview and reimburse Student's parent for the tuition at Westview to date.

Student's complaint references Los Angeles Unified School District and Palisades Charter High School. However, other than naming LACOE as a respondent local educational agency, there are no further references to LACOE in Student's complaint. There

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[3] 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

[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).

is no contention that LACOE was involved in or should have been involved in developing an IEP for Student. There is no contention that LACOE was responsible for providing Student with a free appropriate public education or that it should have been so responsible. Additionally, Student does not request any remedies as to LACOE.

Student's complaint therefore is insufficiently pled in that it fails to provide LACOE with the required notice of a description of the problem and the facts relating to the problem in order to allow it to present a defense to Student's allegations and reasonably participate in the resolution session and mediation processes.

MEDIATOR ASSISTANCE FOR NON-REPRESENTED PARENTS

A parent who is not represented by an attorney may request that the Office of Administrative Hearings (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) as to LACOE.

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 file a timely amended complaint, the complaint will be dismissed as to LACOE.

5. All dates previously set in this matter will remain on calendar as to the Los Angeles Unified School District and the Palisades Charter High School unless Student files an amended complaint.

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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.

6. If Student wishes the assistance of an OAH mediator in identifying issues and resolutions for an amended complaint, Student's parent should contact OAH as soon as possible.

Dated: June 24, 2013

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