BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENTS ON BEHALF OF STUDENT, v. SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2013040323
SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT, v. PARENTS ON BEHALF OF STUDENT.	OAH CASE NO. 2013030385 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On March 11, 2013, the Santa Monica-Malibu Unified School District filed a due process hearing request, naming Student. April 8, 2013, Student's parents on behalf of Student (Student) filed a due process hearing request[1] (Student's complaint) naming the Santa Monica-Malibu Unified School District (District). The Office of Administrative Hearings (OAH) consolidated the two cases.

On April 16, 2013, the District 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).

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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).

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 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

The District's initial complaint sought an order from OAH finding that the District's January 30, 2012 speech and language assessment, the June 1, 2012 occupational therapy assessment, and the June 7, 2012 psychoeducational assessment were appropriate. The District also sought an order that the District was not required to provide an independent educational evaluation (IEE) in response to the request made by Student's parents on January 28, 3013.

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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).

Student's complaint involves some of the same assessments. Student's first issue alleges that the District denied Student a FAPE by failing to conduct appropriately the June 30, 2012 speech and language assessment and the June 7, 2012 psychoeducational assessment. Student's second issue alleges that the District failed to assess Student in all areas of suspected disability. The third issue alleges that the District denied Student a FAPE by failing to provide the requested IEE. The fourth issue alleges that the District failed to reassess Student when warranted. The fifth issue alleges that the District failed to amend Student's June 11, 2012 individualized education program (IEP) to provide services appropriate to meet her needs.

While the fifth issue is broadly stated, the underlying facts in Student's complaint set forth a disagreement between the parties about whether the District needed to further assess Student's language processing and a dispute over the appropriate level of speech and language services. The facts also allege inaccuracies in the District's assessments of Student. These facts are sufficient to address any ambiguity in Student's fifth issue.

The District objects to Student's complaint on the grounds that Student bases "her entire complaint on the theory that the District is responsible for providing a medical diagnosis." While that argument may or may not present a defense at hearing, it is not a basis for an NOI. It is essentially a summary judgment motion, and special education due process procedures do not permit summary judgment motions.

The District also argues that Student fails to allege which IEP is at issue or give other details about the dispute. However, the facts alleged are sufficient to set forth the basis for Student's complaint. The complaint provides the District with sufficient notice to respond to the allegations and to participate in a resolution session and mediation.

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.

Dated: April 16, 2013

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings