BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SAN DIEGO UNIFIED SCHOOL DISTRICT.	OAH Case No. 2015040201 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On March 26, 2015, Parent on behalf of Student filed with the Office of Administrative Hearings a Due Process Hearing Request[1] (complaint) naming the San Diego Unified School District as respondent. The complaint, which was in letter form, contained a single issue

On April 7, 2015, San Diego timely filed a Motion to Dismiss Complaint Due to Deficiency in Pleading and Failure to State a Claim for Which OAH Can Grant Relief, which is deemed a Notice of Insufficiency (NOI).

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 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

The sole issue in the complaint was whether San Diego failed to provide Student a FAPE by depriving her the services from a licensed vocational nurse. Student allegedthat she had been receiving services from a licensed vocational nurse at Morse High School, and that San Diego terminated the licensed vocational nurse's services. As a proposed resolution, Student requested that San Diego continue to provide nursing services from a licensed vocational nurse.

San Diego contends that the complaint was insufficient because it failed to contain sufficient facts to put San Diego on notice of the claim being alleged. Additionally, San Diego contends that the issue of providing a licensed vocational nurse to Student did not relate to the provision of a free appropriate public education, and was not within OAH's jurisdiction.

The facts alleged in Student's complaint are sufficient to put San Diego on notice of the issuestated above, and provided adequate related facts about the problem to permit San

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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).

Diego to respond to the complaint, participate in a resolution session and mediation. Therefore, Student's complaint is sufficient.

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.

DATE: April 17, 2015

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings