BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SIMI VALLEY UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013040852 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On April 17, 2013, Parent on behalf of Student filed a Due Process Hearing Request[1] (complaint) naming Simi Valley Unified School District (SVUSD) as the respondent.

On April 30, 2013, SVUSD filed a Notice of Insufficiency (NOI) as to the 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 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

[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).

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 facts alleged in Student's complaint are sufficient to put the District on notice of the issues forming the basis of the complaint. Student alleges that his classroom placement is not appropriate. As background facts, Student cites his low test scores and grade levels. He also alleges that the classroom makeup, containing students with varying learning and emotional challenges, is not the appropriate placement for his educational needs. Student also alleges, as a proposed resolution, that he should be provided with one-on-one teaching and attention, using an in-home teacher or tutor. As background facts, the complaint states that in the past, SVUSD did provide Student with a part-time tutor; that this was appropriate and beneficial; and that SVUSD then discontinued the service.

The complaint, although not extensive, is sufficiently pled, in light of the broad remedial purposes of the IDEA. Liberally construed, it alleges that Student was denied a FAPE by being provided an inappropriate classroom placement. Given the relative informality of IDEA's pleading requirements, the complaint is sufficiently pled to put SVUSD on notice as to the basis of Student's claims.

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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).

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: May 03, 2013

/s/

JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings