BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PALOS VERDES PENINSULA UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2013021001 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On February 27, 2013, Palos Verdes Peninsula Unified School District (District) filed a Due Process Hearing Request (complaint) naming Student.

On March 15, 2013, Student filed a Notice of Insufficiency (NOI) as to District's complaint.

On March 18, 2013, the undersigned ALJ issued an Order finding the complaint sufficient because the NOI was not timely filed. On March 20, Student filed a motion for reconsideration. The motion for reconsideration was granted on March 21, 2013, and this order will address the merits of the NOI filed on March 15, 2013.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.[1] 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.[2] These

[1] 20 U.S.C. § 1415(b) & (c).

[2] 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.[3]

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint."[4] 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.[5] Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.[6]

DISCUSSION

The facts alleged in District's complaint are sufficient to put the Student on notice of the issues forming the basis of the complaint. District's complaint identifies one issue for hearing: Whether Student's May 7 and 8, 2012 individualized education program (IEP), as revised on October 8 and November 30, 2012, offers and makes available to Student a free appropriate public education (FAPE) in the least restrictive environment (LRE). The issue puts Student on notice as to time frame, from May 7, 2012, and the four IEP's the District is putting at issue in the hearing.[7] The complaint contains adequate facts about the problem to permit Student to respond to the complaint and participate in mediation.

Therefore, District's statement of the claims is sufficient.

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

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

[5] *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.].

[6] 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).

[7] Allegations that the parents have consented to part of the IEPs in question are better addressed through a motion to dismiss and are not addressed in this Order.

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.

IT IS SO ORDERED

Dated: March 21, 2013

/s/
MARGARET BROUSSARD
Administrative Law Judge
Office of Administrative Hearings