

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

NEWPORT-MESA UNIFIED SCHOOL  
DISTRICT AND CALIFORNIA  
DEPARTMENT OF EDUCATION.

OAH CASE NO. 2011010026

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On January 3, 2011, Student filed a Due Process Hearing Request<sup>1</sup> (complaint) against the Newport-Mesa Unified School District (District) and the California Department of Education (CDE). On January 12, 2011, the District filed a Notice of Insufficiency (NOI) as to Student's hearing request, and Student filed a response on January 13, 2011.<sup>2</sup>

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.<sup>3</sup> 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

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<sup>1</sup> 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).

<sup>2</sup> The District also filed a Motion to Dismiss. As Student's complaint is not sufficiently pled, the District's Motion to Dismiss is moot. If Student files an amended complaint, the District may file a new Motion to Dismiss.

<sup>3</sup> 20 U.S.C. § 1415(b) & (c).

resolution of the problem to the extent known and available to the party at the time.<sup>4</sup> 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.<sup>5</sup>

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”<sup>6</sup> 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.<sup>7</sup> Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.<sup>8</sup>

## DISCUSSION

Student’s complaint contains three issues for hearing that allege from March 2009 through the present that the District denied him a FAPE because it purportedly failed to provide him with adequate services to meet his unique needs, did not assess him in all areas of suspected disability, and unilaterally stopped providing applied behavior analysis (ABA) services. The complaint consists primarily of allegations that occurred before March 2009, which were presumably resolved in the parties’ March 2009 settlement agreement, as set forth in the complaint. The complaint contains scant information of the District’s alleged violations after the settlement agreement.

Therefore, Student’s complaint is insufficiently pled as the complaint does not adequately describe the District’s offer of services and placement after March 2009, and when the District should have assessed Student and stopped ABA services. Accordingly, the complaint is insufficiently pled in that it fails to provide the District with the required notice

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<sup>4</sup> 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

<sup>5</sup> See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

<sup>6</sup> Sen. Rep. No. 108-185, *supra*, at p. 34.

<sup>7</sup> *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.].

<sup>8</sup> 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).

of a description of the problem and the facts relating to the problem to permit District to respond to the complaint and participate in a resolution session and mediation.<sup>9</sup>

ORDER

1. Student's complaint is insufficiently pled under section title 20 United States Code 1415(c)(2)(D).

2. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).<sup>10</sup>

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.

5. All dates previously set in this matter are vacated.

Dated: January 19, 2011

/s/

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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>9</sup> Student is advised that an amended complaint needs to focus on the alleged violations that occurred on and after March 2009, and that 14 pages of background facts in an 18 page complaint are not needed.

<sup>10</sup> The filing of an amended complaint will restart the applicable timelines for a due process hearing.