

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2010031771

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On March 25, 2010, Student filed at Due Process Hearing Request<sup>1</sup> (complaint) naming the Los Angeles Unified School District (District).

On April 7, 2010, the District timely 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.<sup>2</sup> The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of 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.<sup>3</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>4</sup>

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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> 20 U.S.C. § 1415(b) & (c).

<sup>3</sup> 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV)

<sup>4</sup> See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”<sup>5</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>6</sup> Whether the complaint is sufficient is a matter within the sound discretion of the ALJ.<sup>7</sup>

## DISCUSSION

Student’s complaint basically alleges that Student, who is four years old, did not previously want to go to school and was not progressing in his education. However, during the past summer, he attended summer school with his brother and became more motivated and happy about attending school. Student states that he would benefit from going to the same school as his brother because he would learn and progress more since he is more motivated when attending the same school.

Although there is a suggestion in the complaint that Student is not progressing in his present program, there are no facts or details concerning the program or why it is not appropriate for him. There is no indication of the type of program and/or services that Student presently receives, or why the program and/or services are not meeting his needs. Additionally, Student’s complaint does not identify the school his brother attends or whether that school has the type of program and/or services Student needs in order to access his education. Student’s complaint therefore does not provide the District with enough information regarding the reasons Student believes the District is presently failing to provide him with a free and appropriate public education. Student must provide more information regarding the problem he has with his present educational program and why he believes it is not legally appropriate for him. In order to assist Student and his parents, the Office of Administrative Hearings (OAH) will provide Student’s parents with the assistance of a mediator to help them formulate the issues in their complaint if Student’s parents contact OAH and request that type of help.

## ORDER

1. Student’s complaint is insufficiently pled under section 1415(c)(2)(D).

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<sup>5</sup> Sen. Rep. No. 108-185, *supra*, at p. 34.

<sup>6</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>7</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).

2. Student shall be permitted to file an amended complaint under section 1415(c)(2)(E)(i)(II).<sup>8</sup>

3. The amended complaint shall comply with the requirements of 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.

6. Pursuant to Education Code, section 56505, subdivision (e)(6), upon the request of a parent who is not represented by an attorney, OAH shall provide a mediator to assist the parent in identifying the issues and the proposed resolutions of the issues. Should Student's parents desire the assistance of a mediator, they must contact OAH at (916) 263-0880 immediately upon receipt of this Order to request assistance in formulating the issues in Student's complaint.

Dated: April 12, 2010

/s/

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DARRELL LEPKOWSKY  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>8</sup> The filing of an amended complaint will restart the applicable timelines for a due process hearing.