

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. 2010061089

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On June 24, 2010, Parent filed a Due Process Hearing Request<sup>1</sup> (complaint) naming Los Angeles Unified School District (District).

On, July 2, 2010, Patrick Balucan, Assistant General Counsel for District, 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 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.<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

The first problem described in Student’s complaint is “Best interest of [Student].” As stated, the allegation fails to provide a description of the nature of the problem concerning the identification, evaluation, or educational placement of Student under special education law. Nor does it provide a description of a problem relating to the provision of a FAPE for the Student. Moreover, Student fails to include any facts related to a claim showing that Student is entitled to relief. This problem is legally insufficient.

The second problem described in Student’s complaint is “Individu[al]ize attention without peer pressure”. As stated, the allegation fails to provide a description of the nature of the problem concerning the identification, evaluation, or educational placement of Student under special education law. Nor does it provide a description of a problem relating to the provision of a FAPE for the Student. Moreover, Student fails to include any facts related to a claim showing that Student is entitled to relief. This problem statement is legally insufficient.

The third problem described in Student’s complaint is “Mastery of concept without distraction,” which suggests that Student may be in need of distraction-free assistance. However, it does not provide adequate information to determine whether the nature of the problem concerns the identification, evaluation, or educational placement of Student, or the provision of a FAPE to Student. This problem statement is legally insufficient.

The fourth problem described in Student’s complaint is “Focus on [Student’s] specific needs”. As stated, the allegation fails to provide a description of the nature of the problem concerning the identification, evaluation, or educational placement of Student. Nor does it provide a description of a problem relating to the provision of a FAPE for the Student.

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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).

Moreover, Student fails to include any facts related to a claim showing that Student is entitled to relief. This problem statement is legally insufficient.

As pled, Student's complaint is legally insufficient. Student fails to allege any of Districts actions or inactions resulted in a dispute concerning the identification, evaluation, placement or denial of a FAPE. Student fails to state any specific year these allegations were to have occurred. While the complaint does not need to reach the level of specificity and detail of a pleading or complaint filed in a court of law, the purpose of the sufficiency requirement is to ensure that the other party, which is generally the school district, will have an awareness and understanding of the issues forming the basis of the complaint. (Sen.Rep.No. 108-185, 1<sup>st</sup> Sess. (2003) pp. 34-35).

In the statement of proposed resolutions, Student alludes that he is receiving some support services from District and requests therapeutic behavioral services, but fails to provide any information other than his emotional needs and academics will be strengthened with therapeutic behavioral services. While this proposed resolution is not well defined, Student has met the statutorily required standard of stating a resolution of the problem to the extent known and available to the party at the time.

Student's complaint is insufficiently pled in that it fails to provide District with the required notice of a description of the problem and the facts relating to the problem or a sufficiently proposed resolution to these allegations. Accordingly, Student's complaint is legally insufficient.

#### ORDER

1. Student's complaint is insufficiently pled under Title 20 United States Code section 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>8</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.

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

Dated: July 9, 2010

/s/

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LISA O'BRIEN  
Administrative Law Judge  
Office of Administrative Hearings