

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

LOS ANGELES COUNTY DEPARTMENT  
OF MENTAL HEALTH.

OAH CASE NO. 2010080181

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On August 05, 2010, Parents on behalf of Student (herein collectively referred to as Student) filed a Due Process Hearing Request<sup>1</sup> (complaint) naming the Los Angeles County Department of Mental Health (DMH). On August 9, 2010, DMH timely filed a 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

Student’s complaint contains only one allegation which poses the question of whether for the 2009-2010 school year beginning with a denial letter dated July 15, 2010, DMH refused to complete an assessment of Student under AB3632 to determine Student’s eligibility for services from DMH. In its NOI, DMH does not dispute that it declined to assess Student. However, it contends Student’s complaint is insufficient because DMH had legally sufficient reasons for not completing an assessment of him and because Student states no facts to support his allegation that would put DMH on notice of why it has denied a free appropriate public education (FAPE) to him.

DMH’s first contention regarding the sufficiency of Student’s complaint is not well-taken. DMH raises facts regarding the issue that are not part of Student’s underlying complaint and which are more appropriately brought as an affirmative defense to Student’s allegations. DMH attaches to its NOI a copy of the July 15, 2010 letter referenced in Student’s complaint and then requests the Office of Administrative Hearings (OAH) to rule on the issue based upon the contents of the letter and based upon prior decisions of OAH. DMH has, in effect, brought a motion for summary judgment by requesting a finding of insufficiency based upon facts and evidence outside the four corners of Student’s complaint. Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc...), special education law does not provide for a summary judgment procedure. DMH is essentially requesting a ruling on the merits of Student’s complaint, which is inappropriate in the context of an NOI.

However, DMH is correct in its assertion that Student fails to detail any facts in his complaint that would support his contention that DMH denied him a FAPE when it declined to assess him. There is a paucity of facts in Student’s very brief complaint. The only facts

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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).

indicated are that Student has been found eligible for special education as a student with a specific learning disability and that he receives resource specialist, counseling, and guidance services. Student alleges no fact concerning why he requires a referral to DMH for an assessment, whether his school district made the referral, and if it did, when and under what circumstances. Student's complaint therefore is insufficiently pled in that it fails to provide DMH with the required notice of a description of the problem and the facts relating to the problem.

### 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.

Dated: August 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.