

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. 2010090919

ORDER OF DETERMINATION OF  
INSUFFICIENCY OF DUE PROCESS  
COMPLAINT

On September 16, 2010, Student filed a Due Process Hearing Request<sup>1</sup> (complaint) naming the Los Angeles Unified School District (District) as respondent. On October 27, 2010, District filed a Request to Reset the Statutory Timeline, alleging that it had not received a copy of Student's complaint until October 26, 2010. On November 2, 2010, the Office of Administrative Hearings (OAH) issued an order granting District's request to reset the timelines, revising the initial date of filing to October 25, 2010. On October 29, 2010, District filed a Notice of Insufficiency (NOI) as to Student's complaint. Student filed no opposition.

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

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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)

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>

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 states, in essence, the following reasons for his due process complaint: (1) asthma; (2) dangerous area; (3) lack of assertiveness to express himself; (4) his mother’s disability prevents her from walking with Student; (5) Student is on medications; and (6) Student suffers from arthritis. However, Student’s complaint fails to state how, specifically, the above-listed factors relate to an alleged denial of a free and appropriate public education (FAPE). The complaint includes no facts, dates, references to Student’s placement, references to related serves, references to any pertinent IEPs, references to any school years, or any other information explaining how District failed to provide Student a FAPE. As a proposed resolution, Student makes a vague reference to transportation as a means to help address Student’s “mental and physical problems,” but it remains unclear how this proposed resolution has any specific nexus to any facts demonstrating any violations committed by the District. As such, 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.

## ORDER

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

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<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.

<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. A parent who is not represented by an attorney may request that the Office of Administrative Hearings provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. (See Ed. Code, § 56505.) Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request

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: November 2, 2010

/s/

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CARLA L. GARRETT  
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.