

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

GUARDIAN ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT, CALIFORNIA DEPARTMENT
OF EDUCATION, CALIFORNIA
HEALTH AND HUMAN SERVICES
AGENCY, CALIFORNIA DEPARTMENT
OF MENTAL HEALTH, AND LOS
ANGELES COUNTY DEPARTMENT OF
MENTAL HEALTH.

OAH CASE NO. 2010110312

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On November 8, 2010, Student filed a Due Process Hearing Request¹ (complaint) against the Los Angeles Unified School District (LAUSD), California Department of Education (CDE), California Health and Human Services Agency (CHHS), California Department of Mental Health (CDMH), and Los Angeles County Department of Mental Health (LACDMH). On November 23, 2010, CDMH 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.² 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,

¹ 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).

² 20 U.S.C. § 1415(b) & (c).

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.³ 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.⁴

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁵ 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.⁶ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁷

DISCUSSION

Student’s complaint raises two issues for determination regarding the opposing parties’ respective duties to ensure that a mental health assessment is conducted pursuant to LAUSD’s October 2010 assessment referral to LACDMH. CDMH asserts that Student’s claims do not contain any allegations that CDMH denied Student a FAPE. While the complaint concerns allegations that LACDMH failed to timely assess Student, the allegations do involve CDMH because LACDMH purportedly failed to commence its assessment of Student after the Governor’s October 8, 2010 veto of state funding to county mental health agencies to provide mental health services for special education students pursuant to Government Code sections 7570, et seq., including mental health assessments. The complaint contains sufficient allegations that CDMH might be the responsible agency to

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

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

⁵ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁶ *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.].

⁷ 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).

ensure that the mental health assessment is conducted. (Govt. Code, §§ 7571 and 7576, subd. (a) and Cal. Code Regs., tit. 2, §§ 60600, subd. (a).)

While CDMH might not be responsible party, or is outside the scope of OAH's jurisdiction to determine if CDMH is the responsible party, CDMH's contentions are not appropriate for a NOI, which just looks at the face of the complaint to determine its sufficiency. CDMH's contentions will be addressed in its Motion to Dismiss, filed November 23, 2010. Accordingly, Student's complaint is legally sufficient.

ORDER

1. The complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: November 29, 2010

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings