

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

GUARDIAN ON BEHALF OF STUDENT,

v.

PASADENA UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2011040074

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On March 30, 2011, Student filed a Due Process Hearing Request<sup>1</sup> (complaint) against the Pasadena Unified School District (District). On April 14, 2011, the 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

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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 Individuals with Disabilities Education Act 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 Administrative Law Judge.<sup>7</sup>

## DISCUSSION

Student’s complaint contains three issues for hearing, alleging that the District failed to timely identify and assess Student as child who might require special education services, and after the District finally assessed Student and found him eligible for special education services failed to develop an educational program that provided him with a FAPE.<sup>8</sup> In the first issue, Student alleges that the District was on notice as of 2007 that he should be assessed for possible special education eligibility, but did not present Guardian with an assessment plan until April 2009. The complaint is not adequately pled because Student alleges that the District was aware of Student’s possible special education eligibility due to an assessment conducted in 2007 by the Los Angeles County Department of Children and Family Services (LACDCFS). However, Student fails to allege when the District received a copy of the LACDCFS assessment report. Therefore, Issue 1 does not contain sufficient factual allegations.

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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).

<sup>8</sup> The fourth issue is whether the District violated other provisions of state and federal law that are outside the scope of the Office of Administrative Hearings’ jurisdiction. The District stated that it will file a separate motion to dismiss Issue 4.

Regarding Issue 2, Student alleges that the District failed to accurately identify his unique needs because the District did not assess him in all areas of suspected disability. The complaint contains adequate allegations regarding the District's purported failure to assess Student in all areas of suspected disability. Accordingly, this issue is sufficiently pled.

Finally as to Issue 3, Student asserts that the IEPs developed by the District were not reasonably calculated to permit Student to make meaningful educational progress because the IEPs did not adequately address his unique needs as to his anxiety, auditory and visual processing and speech and language deficits.<sup>9</sup> The complaint contains adequate allegations as to the District's offers, Student's unique needs and how the IEPs failed to meet his unique needs. Accordingly, this issue is sufficiently pled.

Issues 2 and 3 are sufficiently pled to put the District on notice as to the basis of Student's claims to permit the District to respond to the complaint and participate in a resolution session and mediation.

With regard to Issue 1, Student fails to allege sufficient facts supporting this claim to put the District on notice, and therefore this claim is insufficient.

#### ORDER

1. Issues 2 and 3 of Student's complaint are sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).

2. Issue 1 of Student's complaint is insufficiently pled under title 20 United States Code section 1415(c)(2)(D).

3. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).<sup>10</sup>

4. 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.

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<sup>9</sup> If Student contends that the District's educational programs did not address other areas of needs, Student will need to file an amended complaint to add any additional areas of need that the District purportedly failed to address.

<sup>10</sup> The filing of an amended complaint will restart the applicable timelines for a due process hearing.

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues 2 and 3 in Student's complaint.

Dated: April 15, 2011

/s/

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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings