

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ANAHEIM CITY SCHOOL DISTRICT.

OAH CASE NO. 2011050874

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On May 20, 2011 Student filed a Due Process Hearing Request<sup>1</sup> (complaint) naming District.

On June 1, District filed a response to the complaint, and on June 2, 2011, it filed a timely 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 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 Administrative Law Judge.<sup>7</sup>

## DISCUSSION

The ALJ has reviewed the complaint and determined that the following issues have been alleged in Student’s complaint as follows:

Procedural violations:

1. During the December 2009 IEP, District failed to develop appropriate specially designed instruction in speech and gross motor skills, resulting in a loss of educational benefit.
2. During unspecified time periods and at unspecified IEPs, District used inadequate assessments by Dr. Frankel in March 2009, and by an unnamed behavior assessor on an undisclosed date, to create Student’s educational curriculum, resulting in a loss of educational benefit.

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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).

3. During unspecified time periods but including the March 4, 2011 IEP, District failed to develop accurate present levels of performance because its ABA data was incorrectly analyzed, resulting in a loss of educational benefit.
4. During the March 4, 2011 IEP, District denied a FAPE by failing to address important areas of need, develop measureable goals and accurately report present levels of performance in areas of need such as math, science and social studies, resulting in unclear present levels of performance and an unclear offer of ABA support, resulting in a loss of educational benefit.
5. For an unspecified period of time, District interfered with parents' meaningful participation in the IEP process by failing to offer measureable goals.

#### Substantive Violations

6. During the 2009-2010 school year, District denied Student a FAPE in the least restrictive environment with appropriate related services by offering a special day class with unspecified related services.
7. During the 2010-2011 school year, District denied Student a FAPE in the least restrictive environment with appropriate related services by offering a special day class with unspecified related services.
8. District provided an inappropriate level of behavior services at the March 4, 2011 IEP
9. At unspecified time periods, District failed to implement appropriate specifically designed instruction in math, reading, comprehension, and speech therapy.
10. At unspecified time periods, District failed to meet Student's instructional needs in the areas of receptive and expressive oral language, reading, math, social studies, science, behavior and socialization.
11. District did not consider the impact of current services and did not provide transition planning for Student, who is nine-years old.
12. A violation of Section 504 of the Rehabilitation Act.

District contends that it does not have adequate notice of the issues because Student's time period in controversy is not adequately defined., the multiple IEP meetings conducted during the time period at issue were not clearly alleged, that the two assessments at issue were beyond the statute of limitations and that the alleged areas of need were not sufficiently pleaded.

As discussed below, of the 12 claims in Student's complaint, only some of them are sufficiently explained to give District adequate notice. Issues 1, 4, and 8 are sufficiently

pled to put District on notice as to the basis of Student's claims. 6 and 7 are sufficiently plead as to placement but insufficient as to related services. Issue 3 is sufficient as to the March 4, 2011 IEP only.

With regard to Issue 2, Student fails to allege time periods of the alleged violations and the operative IEPs with specificity. Therefore, Student has failed to state sufficient facts supporting this claim, and the claim is insufficient.

With regard to Issue 3, Student fails to allege time periods of the alleged violations and the operative IEPs with specificity, other than the March 4, 2011 IEP. Therefore, Student has failed to state sufficient facts supporting this claim, and the claim is insufficient as to all other time periods.

With regard to Issue 5, Student fails to allege time periods of the alleged violations and the operative IEPs with specificity. Therefore, Student has failed to state sufficient facts supporting this claim, and the claim is insufficient.

With regard to Issues 6 and 7, Student fails to allege sufficient facts regarding related services, time periods of the alleged violations and the operative IEPs with specificity. Therefore, Student has failed to state sufficient facts supporting this claim, and the claim is insufficient.

With regard to Issues 9 and 10, Student fails to allege time periods of the alleged violations and the operative IEPs with specificity. Therefore, Student has failed to state sufficient facts supporting this claim, and the claim is insufficient.

With regard to Issue 11, Student fails to allege time periods of the alleged violations and the operative IEPs with specificity. Therefore, Student has failed to state sufficient facts supporting this claim, and the claim is insufficient.

With regard to Issue 12, OAH has no jurisdiction over Section 504 of the Rehabilitation Act.

#### ORDER

1. Issues 1, 3, 4, 6, 7, 8, of Student's complaint are sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).
2. Issues 2, 3, 5, 6, 7, 9, 10, and 11 of Student's complaint are insufficiently pled under Title 20 United States Code section 1415(c)(2)(D).
3. Issue 12 is beyond OAH's jurisdiction and is dismissed.

4. 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>

5. 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.

6. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues 1, 3, 4, 6, 7 and 8.

Dated: June 10, 2011

/s/

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DEBORAH MYERS-CREGAR  
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.