

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FOUNTAIN VALLEY SCHOOL  
DISTRICT.

OAH CASE NO. 2011071065

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On July 29, 2011, Parents on behalf of Student (Student) filed a Due Process Hearing Request<sup>1</sup> (complaint) naming the Fountain Valley School District (District) as respondent. The complaint contains four issues alleging that Student was denied a free appropriate public education (FAPE) by the District at the November 30, 2010 Individualized Education Program (IEP) meeting.

On August 12, 2011, the District filed a Notice of Insufficiency (NOI) as to the fourth issue alleged in Student's complaint. Student has not filed a response to the NOI.

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

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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).

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>

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

Student’s issue four alleges: “Due to the District’s failure to assess [Student] in all areas of disability it was necessary for his parents to obtain an independent education evaluation [IEE] from Robin Morris, Ph.D.” Student seeks reimbursement for the costs of the Morris IEE.

The District claims that issue four in the complaint is insufficiently pled as the Student has failed to allege any facts to support the allegation.

Issue four of Student’s complaint is insufficiently pled in that it fails to provide the District with the facts relating to the problem. Issue four is merely a conclusory statement and fails to provide the District with the factual basis of the problem so as to put them on notice what Student is alleging. The District is entitled to be provided with information

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<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.

<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).

including which assessments are the subject of issue four; and which areas of suspected disability were not assessed, and the factual basis for the allegation.

### ORDER

1. Issue four of Student's complaint is insufficiently pled under section Title 20 United States Code 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 hearing shall proceed only on Issues one, two, and three in Student's complaint.

Dated: August 12, 2011

/s/

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ROBERT HELFAND  
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.