

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TEMECULA VALLEY UNIFIED  
SCHOOL DISTRICT.

OAH CASE NO. 2011080092

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT; ORDER ON MOTION  
TO DISMISS

On September 12, 2011, Student filed a Motion to Amend her Due Process Hearing Request (amended complaint) naming District as the respondent. By Order dated September 16, 2011, the Office of Administrative Hearings (OAH) granted the Motion to Amend, and deemed the amended complaint filed. On September 19, 2011, District filed a Notice of Insufficiency (NOI) as to the amended complaint. District's NOI also contained a Motion to Dismiss Student's Issue 3 for lack of jurisdiction. As discussed below, the Motion to Dismiss is granted, and Issue 3 is dismissed. In all other respects District's NOI is denied.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.<sup>1</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>2</sup> These requirements prevent vague and confusing complaints, and promote fairness by providing the

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<sup>1</sup> 20 U.S.C. § 1415(b) & (c).

<sup>2</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>3</sup>

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”<sup>4</sup> The pleading requirements should be liberally construed in light of the broad remedial purposes of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) and the relative informality of the due process hearings it authorizes.<sup>5</sup> Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.<sup>6</sup>

The purpose of the IDEA is to ensure that all children with disabilities have available to them a FAPE, and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.) OAH does not have jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), Section 1983 of Title 42 United States Code, state civil rights statutes, or the Americans with Disabilities Act.

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<sup>3</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>4</sup> Sen. Rep. No. 108-185, *supra*, at p. 34.

<sup>5</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>6</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).

## DISCUSSION

Issue 1 in the amended complaint alleges that despite being on notice of Student's anxiety and mental health needs, District failed to fully and timely assess Student in the spring of 2011 so that it could make an offer of FAPE for her. Issue 2 alleges that District failed to offer FAPE for the 2011-12 school year, as the individualized education program (IEP) team had not met and agreed to placement by the beginning of the year pending further assessments, and because the IEP team made an offer of placement and services which did not meet Student's unique needs. The facts alleged in Issues 1 and 2 of Student's amended complaint are sufficient to put District on notice of the issues forming the basis of the complaint. Therefore, Student's statement of Issues 1 and 2 is sufficient.

Issue 3 of Student's amended complaint alleges violations of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), state and federal civil rights statutes, and the Americans with Disabilities Act. OAH is without jurisdiction to entertain these claims. Issue 3 is therefore dismissed.

## ORDER

1. Issues 1 and 2 of Student's amended complaint are sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).
2. Issue 3 is dismissed.
3. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: September 20, 2011

/s/

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JUNE R. LEHRMAN  
Administrative Law Judge  
Office of Administrative Hearings