

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FRANKLIN MCKINLEY SCHOOL  
DISTRICT.

OAH CASE NO. 2011080709

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On August 17, 2011, Student filed a Due Process Hearing Request<sup>1</sup> (complaint) naming Franklin McKinley School District (District).

On September 1, 2011, District filed a Notice of Insufficiency (NOI) as to District'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

Student’s complaint alleges two issues. Issue one is not sufficiently pled, but issue two is sufficient for the reasons set forth below.

With respect to issue one, Student fails to provide sufficient detail to identify the problem and provide District with notice of the problem. Student must state whether he contends that District has failed to assess Student or whether the assessments performed, if any, were inappropriate or not sufficiently comprehensive. Student also fails to identify the type of assessments that he is concerned with and what type of assessments he seeks from District. Further, if there is a particular assessment at issue, Student must identify the assessment. Therefore, issue one is not sufficiently pled to put District on notice of the problem.

Issue two is sufficiently pled to the extent it asserts that District has denied Student a free appropriate public education (FAPE) by failing to provide an appropriate placement for the 2011-2012 school year.

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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).

Student's proposed resolutions are not well-defined. However, Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

A parent who is not represented by an attorney may request that the Office of Administrative Hearings (OAH) provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint.<sup>8</sup> Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

#### ORDER

1. Issue one of the complaint is insufficiently pled under Title 20 United States Code section 1415(c)(2)(D).
2. Issue two of Student's complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).
3. Student shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).<sup>9</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.
5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issue two of the complaint.

Dated: September 9, 2011

/s/

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GLYNDA B. GOMEZ  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>8</sup> Ed. Code, § 56505.

<sup>9</sup> The filing of an amended complaint will restart the applicable timelines for a due process hearing.