

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LONG BEACH UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2012010608

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On January 23, 2012, Student filed a Due Process Hearing Request<sup>1</sup> (complaint) against the Long Beach Unified School District (District) with the Office of Administrative Hearings (OAH). On February 3, 2012, 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 five issues for hearing regarding the District’s alleged failure to perform its child find duties, assess her in all areas of suspected disability, to offer an educational program that provided her with a FAPE and committing procedural violations.<sup>8</sup>

As to Issue 1, Student alleges sufficient facts that the District failed to timely assess her for eligibility for special education services based on the District’s knowledge that Student might require special education services based on her school performance. Therefore, Issue 1 is sufficiently pled.

Regarding Issue 2, Student alleges sufficient facts that the District failed to assess her in all areas of suspected disability as the complaint specifies the areas that the District failed to assess her. Accordingly, Issue 2 is sufficiently pled.

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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> Student’s Issue Six is merely a request for compensatory education based on the District’s purported failure to provide her with a FAPE in Issues 1 – 5.

As to Issue 3, the complaint contains adequate allegations that the District has denied her a FAPE since May 4, 2011, because its proposed individualized education programs have not adequately addressed her unique needs in the offer of placement, related services, goals, transition plan and mental health referral. Therefore, Issue 3 is sufficiently pled.

Finally as to Issues 4 and 5, Student alleges sufficient facts that the District violated her procedural rights by failing to provide proper written notice regarding its change of placement, not offering Student placement at a non-public school, nor providing Parent with a complete copy of Student's educational records. The complaint contains adequate allegations that the District's purported conducted prevented Parent from meaningfully participating in Student's educational decision-making process. Accordingly, Issues 4 and 5 contain sufficient allegations.

Student's proposed resolutions requests compensatory education, placement at a non-public school, funding independent assessment and providing Parent with a complete copy of Student's records. A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (20 U.S.C. §1415(b)(7)(A)(ii)(IV).) The proposed resolutions stated in Student's complaint are well-defined, and therefore meet the statutorily required standard of stating a resolution to the extent known and available at the time.

Therefore, Student's complaint is 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.

#### ORDER

1. The complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: February 7, 2012

/s/  
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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings