

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PANAMA-BUENA VISTA UNION  
SCHOOL DISTRICT AND KERN  
COUNTY SUPERINTENDENT OF  
SCHOOLS.

OAH CASE NO. 2012010845

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On January 26, 2012, Student filed a Due Process Hearing Request<sup>1</sup> (complaint) against the Panama-Buena Vista Union School District (District) and Kern County Superintendent of Schools (KCSOS) with the Office of Administrative Hearings (OAH). On January 27, 2012, the District and KCSOS filed a Notice of Insufficiency (NOI) as to Student's complaint. On January 31, 2012, Student filed a response.

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 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>

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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).

<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.

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 four issues for hearing regarding the District’s and KCSOS alleged failure to assess him in all areas of suspected disability and failing to offer an educational program that provided him with a FAPE.

As to Issue 1, Student alleges sufficient facts that even though the District had found Student eligible for special education services under the qualifying categories of other health impaired and emotional disturbance, that the District and KCSOS should have also qualified him as eligible as intellectually disabled based on information that they possessed.<sup>8</sup> Therefore, Issue 1 is sufficiently pled.

Regarding Issue 2, Student alleges sufficient facts that the District and KCSOS failed to assess him in all areas of suspected disability as the complaint asserts that the District and KCSOS failed to assess his learning disabilities related to intellectual disability. Accordingly, Issue 2 is sufficiently pled.

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<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> In 2010, Congress deleted references to “mental retardation” in the Individuals with Disabilities Education Improvement Act (IDEA), and replaced it with “intellectual disabilities.” (Pub.L. 111-256, 124 Stat. 2643.) This order will conform to this change in the IDEA, and use “intellectual disabilities” and not “mental retardation.” (Pub.L. 111-256, § 4; [requirement that States change terminology for individuals covered by provisions of this law].)

As to Issue 3, the complaint contains adequate allegations that based on his unique needs that the District and KCSOS denied him a FAPE by not offering to place Student in a non-public school. Therefore, Issue 3 is sufficiently pled.

Finally as to Issue 4, the issue heading is that the District and KCSOS failed to offer Student appropriate and measurable individualized educational program (IEP) goals. However, the factual allegations concern the accuracy of the IEPs present levels of performance because the District and KCSOS failed to address his intellectually disability. If Student wishes to allege that the IEP's did not contain appropriate and measurable goals, Student will need to amend his complaint to include specific allegations as to the goals at issue and why the proposed goals did not meet his unique needs.<sup>9</sup> Accordingly, Issue 4 contains sufficient allegations that the IEP did not contain accurate present levels of performance.

Student's proposed resolutions requests compensatory education, placement at a non-public school and the development of an IEP that addresses his unique needs. 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 and KCSOS on notice as to the basis of Student's claims to permit the District and KCSOS 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 1, 2012

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

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<sup>9</sup> The filing of an amended complaint will restart the applicable timelines for a due process hearing. (20 U.S.C. § 1415(c)(2)(E)(ii).)