

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PASADENA UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2012020253

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On February 07, 2012 Student filed a Due Process Complaint and Notice of Representation<sup>1</sup> (complaint) naming Pasadena Unified School District as respondent.

On February 22, 2012, District timely 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 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 the District denied Student a free, appropriate public education (FAPE) by failing to timely assess Student for eligibility, assess Student in all areas of suspected eligibility, provide appropriate goals and objectives, placement and services to address Student’s educational deficits and emotional needs, make a timely referral for an AB3632 assessment, and failed to consider the results of a District provided IEE at an IEP meeting. Student alleges specific facts about his educational progress, behaviors and notice to the District during the relevant time periods as to each of these allegations.

Student seeks an order that District fund the participation of the District’s IEE provider at an IEP meeting, modify Student’s special education eligibility finding, place Student in a NPS, provide remedial and compensatory education, fund private psychological counseling and conduct a visual functioning assessment and therapy if recommended.

District contends the complaint is insufficient because it includes claims under the Constitution, the Americans with Disabilities Act, the Rehabilitation Act and other federal laws over which OAH does not have jurisdiction. District further contends the complaint

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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).

does not provide an explanation of Student's allegations concerning Student's goals, services and placement.

Although the complaint states that Student seeks relief for "District's violation of the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, and all other Federal laws protecting the rights of children with disabilities, insofar as such relief is also available under IDEA..." seems to include claims over which OAH has no jurisdiction, the complaint by its own terms is limited to relief available under IDEA. The inclusion of this surplus language does not render the complaint insufficient for purposes of an NOI where the issues and the facts identify the nature of the IDEA claim.

Student's complaint identifies the issues and relates sufficient facts to make District aware of the basis of Student's claims. The IDEA requires only a "description of the nature of the problem" (20 U.S.C. (b)(7)(A)(ii)(III)), a requirement liberally construed in light of the remedial and informal nature of the due process proceedings.

Therefore, Student's complaint is sufficient. To the extent District contends OAH lacks jurisdiction over some of Student's claims, District may move for dismissal either prior to, or at the hearing.

#### 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 24, 2012

/s/

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MARIAN H. TULLY  
Administrative Law Judge  
Office of Administrative Hearings