

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

TEMPLETON UNIFIED SCHOOL  
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2012030518

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On March 21, 2012, District filed an Amended Due Process Hearing Request<sup>1</sup> (amended complaint) naming Student as the respondent.

On March 24, 2012, Student filed a Notice of Insufficiency (NOI) as to District's amended 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>

The procedural safeguards of the IDEA provide that under certain conditions a parent is entitled to obtain an independent educational evaluation (IEE) of a child at public expense. (20 U.S.C. §1415(b)(1).) An IEE is an evaluation conducted by a qualified examiner not employed by the school district. (34 C.F.R. § 300.502(a)(3)(i).) A parent may request an IEE at public expense if the parent disagrees with an evaluation obtained by the school district. (34 C.F.R. § 300.502(b)(1); Ed. Code, § 56329, subd. (b).) When a parent requests an IEE at public expense, the school district must, without unnecessary delay, either initiate a due process hearing to show that its evaluation is appropriate, or provide the IEE at public expense. (34 C.F.R. §300.502(b)(2); Ed. Code, § 56329, subd. (c).)

## DISCUSSION

The facts alleged in District’s complaint are sufficient to put Student on notice of the issues forming the basis of the complaint. District alleges that in October and November 2010, District’s school psychologist conducted an appropriate comprehensive psychoeducational assessment of Student. District further alleges that in April 2011, an occupational therapist conducted an appropriate comprehensive occupational therapy

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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).

assessment. The complaint specifies each testing instrument utilized, the results of each test, and the overall recommendations made. The complaint further alleges that District convened individualized educational program (IEP) meetings to review the assessment results. In February 2012, Parents disagreed with the assessments and requested IEE's. District brought the amended complaint, seeking an order that its psychoeducational and occupational therapy assessments were appropriate and that Student is not entitled to IEE's at public expense. District's complaint identifies the issues and adequate related facts about the problem to permit Student to respond to the complaint and participate in mediation. Therefore District's statement of the claims is sufficient.

Student's NOI argues that District has not stated any proposed resolutions. Although District's amended complaint does not specifically use the terminology "proposed resolutions," it does specify what District seeks, namely an order that its assessments were appropriate and that Student is not entitled to IEE's. District has met the statutorily required standard of stating a resolution to the extent known and available to it at the time.

#### 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: March 26, 2012

/s/

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JUNE R. LEHRMAN  
Administrative Law Judge  
Office of Administrative Hearings