

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. 2012030701

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT AND DISTRICT'S  
MOTION TO DISMISS ISSUES

On March 15, 2012 Parent on behalf of Student (Student) filed a Due Process Hearing Request<sup>1</sup> (complaint) naming Long Beach Unified School District (District). The District was not served with Student's complaint until March 19, 2012.

On March 30, 2012, the District filed a Notice of Insufficiency (NOI) as to Student's complaint. The District also concurrently filed a Motion to Dismiss Issues Five, Seven, and Nine of Student's complaint. Student has filed no opposition to either of the District's requests.

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

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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).

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>

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 nine claims in the complaint, which are all insufficiently pled as discussed below.

1. Student contends that the District has failed to offer Student an appropriate educational program (FAPE) and placement for ESY. The complaint fails to identify Student’s eligibility category(s), current placement and current IEP. The complaint fails to identify what was offered by the District and why its offer (or lack of offer) failed to provide Student with educational benefit. Additionally the complaint seems to be seeking a prospective order of placement and reimbursement for services based upon speculative regression. No specific information or examples of regression have been alleged.

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<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.

<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).

2. Student contends that the District failed to offer extended school year services for the entire time that it is appropriate. Again, Student has failed to include the relevant information needed in Claim One above. Additionally, Student has not identified what period of time is “that’s appropriate,” and has not identified the reason or need for services for non-school periods.

3. Student contends that the District failed to provide social skills (at Alvarado School site) for the period of September 2010 to January 2011. Again Student fails to identify the IEP in question and identify the specific service, time, and duration of the alleged social skills service.

4. Student contends that the District has failed to implement accommodations and modifications from the last agreed upon IEP. Student has failed to identify the specific accommodations/modifications in question, and has failed to provide a factual basis for this claim. Student claims that the District has initiated punitive consequences but fails to indicate what supports were being ignored.

5. Student contends that the District has endeavored to use the power it has over Student’s education as a means of retaliating against Student’s family for their criticisms of and challenges to the District. Student has not alleged any factual or legal basis for this claim. Further, although the claim is insufficient, the subject matter involves issues which are beyond the jurisdiction of the Office of Administration (OAH).<sup>8</sup>

6. Student contends that the District has ignored his request for IEE’s. Student provides no factual information to support this claim. Student fails to indicate when his requests for these assessments were made and whether the District has previously assessed Student.

7. Student contends that the District failed to provide Student with an experienced and knowledgeable therapist/1:1 IBI behaviorist aide which has resulted in Student’s regression. Student has failed to provide any factual information to support this claim. Further, Student’s claim and request for removal of District personnel is beyond the scope of OAH jurisdiction.<sup>9</sup>

8. Student contends that the District has failed to provide meaningful input at IEP’s and has denied requests to include any disagreements in the minutes of the IEP and/or comments made by the professionals. Again Student has failed to identify the specific IEP meeting and provided a factual basis for this claim.

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<sup>8</sup> Ed. Code, § 56501, subd.(a).

<sup>9</sup> Ed. Code, § 56501, subd.(a).

9. Student contends that the District has harassed parent by falsely claiming parent's interactions with the District are hostile, harassing, alarming, and annoying. Student has failed to provide a factual or legal basis for this claim. Further, Student's claim as currently stated is beyond OAH jurisdiction. OAH does not jurisdiction over District personnel, policy or personal conflicts.<sup>10</sup>

Student's complaint is insufficiently pled in that it fails to provide the District with the required notice of a description of the problem and the facts relating to the problem.

**MEDIATOR ASSISTANCE FOR NON-REPRESENTED PARENTS:** A parent who is not represented by an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint.<sup>11</sup> Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

#### ORDER

1. Student's complaint is insufficiently pled under section Title 20 United States Code 1415(c)(2)(D).

2. Student shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).<sup>12</sup>

3. 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.

4. If Student fails to file a timely amended complaint, the complaint will be dismissed.

5. All dates previously set in this matter are vacated.

6. Further determination of the District's Motion to Dismiss Issues is moot.

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<sup>10</sup> Ed. Code §56501, subd. (a).

<sup>11</sup> Ed. Code, § 56505.

<sup>12</sup> The filing of an amended complaint will restart the applicable timelines for a due process hearing.

Dated: April 03, 2012

/s/

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JUDITH PASEWARK  
Administrative Law Judge  
Office of Administrative Hearings