

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

OCEANSIDE UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2012041105

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On April 24, 2012 Parent on behalf of Student (Student) filed a two page Due Process Hearing Request<sup>1</sup> (complaint) naming the Oceanside Unified School District (District) as respondent. The complaint appears to contain two issues. The first issue is that the District failed to assess Student in all areas of suspected disability, namely for Attention Deficit – Hyperactivity Disorder (ADHD) and emotional distress, bipolar disorder. The second issue is that the District failed to offer Student a free appropriate public education (FAPE) on multiple occasions by failing to convene an IEP meeting due to Student’s “rapidly declining grades,” and failed to provide appropriate behavioral supports to Student.

On April 30, 2012, the District filed a Notice of Insufficiency (NOI) as to Student’s complaint. The District contends that it is unable to prepare a response to the complaint or participate in a resolution session or mediation because the complaint is vague because it lacks factual allegations to support the two issues.

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).

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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).

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>

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 two claims in the complaint, which are both insufficiently pled as discussed below. Student’s first issue fails to allege what assessment or assessments failed to assess Student in all areas of suspected disability. The complaint adequately states that the areas that were not assessed were for ADHD and bipolar disorder.

The second issue is vague as it alleges that the “District failed to offer Student a free appropriate public education (FAPE) on multiple occasions;” failed to convene an IEP meeting because of Student’s rapidly declining grades, and failed to provide him appropriate

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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).

behavioral supports. Student fails to allege any factual basis for these conclusory statements. Student needs to allege the dates of the multiple occasions when he was denied a FAPE and the reasons thereto. Additionally, Student needs to allege the facts to support his allegations that the District failed to convene an IEP meeting including dates; and to support his contention, including time references that the District failed to provide appropriate behavior supports.

Student's proposed resolutions request are (1) Student receive "a mutually agreed upon placement and program that will allow Student to obtain a FAPE, and (2) that an Independent Education Evaluation (IEE) be conducted by a mutually agreed upon assessor.

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 first proposed resolution stated in Student's complaint is not well-defined. Student needs to specify the type of placement and program that he seeks. The second resolution is sufficient as it calls for OAH to order an IEE.

#### 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>8</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.

Dated: April 30, 2012

/s/  
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ROBERT HELFAND  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>8</sup> The filing of an amended complaint will restart the applicable timelines for a due process hearing.

