

FORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOWELL JOINT SCHOOL DISTRICT.

OAH CASE NO. 2012060452

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On June 12, 2012, Student filed a Due Process Hearing Request<sup>1</sup> (complaint) naming Lowell Joint School District (District).

On June 22, 2012, District 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 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 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 contains factual allegations, three issues and proposed resolutions. Generally, Student alleges he is 9 years old and attends third grade within the District. Student was found to be eligible for special education services on May 4, 2006, under the category of autism. Student sets forth a history of the academic, social and behavioral difficulties he has had as a result of his disability, the dates and details of the two IEP’s at issue, his failure to make academic progress (for example, he reads at Kindergarten level although his cognitive ability appears to be average), his current and ongoing social and academic difficulties and his parent’s attempts to obtain appropriate placement and services.

Student’s complaint contains two issues for hearing: (1) whether the District offered Student a FAPE in the April 23, 2010, IEP; and (2) whether the District offered Student a FAPE in the April 20, 2011, IEP. Student’s third issue does not allege any specific violations against the District, but is simply a request for compensatory education based the first two issues. Student alleges, as to each disputed IEP, eleven specific substantive and procedural violations including: District failed to properly assess Student, did not include measurable goals in each IEP, did not offer appropriate placement, did not provide related services to address Student’s needs, did not provide a program that allowed Student to make progress and caused Student to regress, and committed various other substantive and procedural violations.

Student’s proposed resolutions include compensatory education, one-to-one aide support, placement on a small campus with specialized academic support, counseling,

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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).

transportation, compensatory services from a nonpublic agency, and reimbursement for attorney fees. The proposed resolutions 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.

The facts alleged in Student's complaint are sufficient to put District on notice of the issues forming the basis of the complaint. Student's complaint identifies the issues and adequate related facts about the problems to permit District to respond to the complaint, participate in a resolution session and mediation and to prepare for 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: June 26, 2012

/s/

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MARIAN H. TULLY  
Administrative Law Judge  
Office of Administrative Hearings