

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ANTELOPE VALLEY UNION HIGH  
SCHOOL DISTRICT.

OAH CASE NO. 2012080122

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On August 3, 2012, Student filed a Due Process Hearing Request<sup>1</sup> (complaint) naming District as the respondent.

On August 10, 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

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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

The facts alleged in Student’s complaint are sufficient to put the District on notice of the issues forming the basis of the complaint. The complaint alleges that in August and September 2010, District failed to implement the placement offered in Student’s then-current individualized educational plan (IEP) and instead enrolled Student in several other placements contrary to the IEP and the wishes of her parents, who were the holders of Student’s educational rights, thereby denying her a free appropriate public education (FAPE). The complaint further states that District inappropriately discontinued transportation as a related service. Student’s complaint identifies the issues and adequate related facts about the problem to permit District to respond to the complaint and participate in a resolution session and mediation. Therefore, Student’s statement of the claims is sufficient.

As background facts, the complaint reveals that Student’s parents and foster mother were engaged in a disagreement that ultimately resulted in Superior Court orders concerning Student’s placement, and that District employees played some role in providing information

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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).

to the court. The complaint alleges that the Superior Court orders comported with the IEP and with parental wishes, but that District nevertheless placed Student in different schools. District's NOI is actually seeking the equivalent of a motion to dismiss and/or a motion for failure to state a claim on which relief can be granted, neither of which is available in a due process hearing. District argues that under the circumstances, there was no denial of a FAPE, and thus no claim upon which relief can be granted. District cites, as controlling authority, a statute relating to the rights of foster children to an immediate placement.

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc....), special education law does not provide for a summary judgment procedure or the equivalent of a motion to dismiss for failure to state a claim on which can be granted. Here, the Motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits as to the operative facts and law, all of which must, however, ultimately be proven at hearing if the complaint is sufficient. Accordingly, because the complaint is sufficient to put the District on notice of the claims and requested relief, the motion is denied. All dates currently set in this matter are confirmed.

#### 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: August 14, 2012

/s/

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JUNE R. LEHRMAN  
Administrative Law Judge  
Office of Administrative Hearings