

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. 2012100718

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On October 18, 2012 Student, through his mother, filed a Due Process Hearing Request<sup>1</sup> (complaint) naming the Long Beach Unified School District (District).

On October 26, 2012, the District timely 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

Student’s complaint alleges two claims. In his first issue, Student states that on June 6, 2012, they received a special education evaluation report in which the District determined that Student is eligible for special education as a slow learner. Student states that he is not in agreement with the eligibility designation. As a remedy, Student requests the District change his eligibility classification to emotionally disturbed (ED). In his second issue, Student states that on June 12, 2012, he requested that the District initiate an educationally related mental health evaluation. Student further states that on September 11, 2012, he formally requested educationally related mental health services. As a remedy, Student requests that the District provide him with mental health services.

Student’s complaint is insufficiently pled because neither of his issues states any facts in support of his allegations. Although Student states that he disagrees that his special education eligibility should be as a “slow learner” (or learning disabled) and contends instead that he should be classified as emotionally disturbed, Student offers no support for his contention.

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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).

Student attached two documents to his complaint. One is a recent District psycho-educational assessment which recommends that Student be found eligible for special education because Student has a specific learning disability (which Student is referring to in his complaint as a “slow learner.”) There is no recommendation in this assessment that Student be found eligible under the category of emotionally disturbed. This assessment report therefore fails to provide any facts to support Student’s complaint.

Student also attached to his complaint his request for an educationally related mental health assessment. However, this is a form document that gives no specific information about what mental health problems Student believes he has or why he believes he needs mental health services.

For these reasons, Student’s complaint is insufficiently pled. The complaint fails to give the District the required notice of a description of the problem and the facts relating to the problem so that it can properly prepare for a resolution session and, if necessary, defend against the claims at a hearing.

#### MEDIATOR ASSISTANCE FOR NON-REPRESENTED PARENTS

A parent who is not represented by an attorney may request that the Office of Administrative Hearings (OAH) provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint.<sup>8</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>9</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.

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<sup>8</sup> Ed. Code, § 56505.

<sup>9</sup> The filing of an amended complaint will restart the applicable timelines for a due process hearing.

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

6. If Student's mother wishes assistance from an OAH mediator in identifying issues for the amended complaint, she should contact OAH immediately.

Dated: October 29, 2012

/s/

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DARRELL LEPKOWSKY  
Administrative Law Judge  
Office of Administrative Hearings