

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LIBERTY UNION HIGH SCHOOL  
DISTRICT; MT. MCKINLEY SCHOOL  
DISTRICT; AND DEPARTMENT OF  
MENTAL HEALTH

OAH CASE NO. 2010120548

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On December 13, 2010 Student, in pro per, initially filed a Mediation Only Request Form with the Office of Administrative Hearings (OAH) naming Liberty Union High School District (LUSD), Mt. McKinley School District (MMSD), and the Department of Mental Health (DMH) as respondents. Subsequently On December 13, 2010, Student filed a two page note in which Student notified OAH of his intent to cancel the Mediation Only Request and to instead file a Due Process Hearing Request (complaint)<sup>1</sup>. Neither document was served on LUSD.

On January 14, 2011, LUSD filed a Notice of Insufficiency (NOI) as to Student's complaint. LUSD contends that Student did not serve LUSD with the complaint and LUSD only discovered the complaint on January 10, 2011 when it received a notice of amended scheduling order from OAH. LUSD requests the dismissal of the complaint on two grounds. First LUSD contends that Student failed to serve the district in violation of Education Code Section 56500.2, subdivision (a)(2). LUSD further contends that the complaint is insufficient because Student has failed to make any claims against LUSD.

Student has not filed a response to LUSD's motion to dismiss the complaint for insufficiency.

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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).

## 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).

The complaint is deemed sufficient unless a party notifies the Office of Administrative Hearings and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements.<sup>3</sup>

The party filing the complaint shall forward a copy of the complaint to the local educational agency or public agency serving the child at the same time the party files the complaint with the department, in accordance with Section 300.153(d) of Title 34 of the Code of Federal Regulations.

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>4</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>5</sup>

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”<sup>6</sup> The pleading requirements should be liberally construed in light of the broad remedial purposes of

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<sup>2</sup> 20 U.S.C. § 1415(b) & (c).

<sup>3</sup> 20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).

<sup>4</sup> 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

<sup>5</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>6</sup> Sen. Rep. No. 108-185, *supra*, at p. 34.

the IDEA and the relative informality of the due process hearings it authorizes.<sup>7</sup> Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.<sup>8</sup>

## DISCUSSION

Student's complaint was filed on December 13, 2010. LUSD indicates in its NOI that it received the complaint on January 10, 2011. LUSD's NOI was timely filed because Student failed to provide a copy of the complaint to district as required by statute and LUSD did not have notice of the complaint until receiving notice from OAH.

The complaint only identifies LUSD and other respondents in the section of the form entitled "Parties to Be Named." Student's complaint alleges in summary form that Student's IEP is not being implemented and that he is not receiving related services in academics or behavior. The complaint also alleges that Student's mental health services have been dropped. The claims in the complaint are insufficiently pled in that they fail to provide LUSD with the required notice of a description of the problem and the facts relating to the problem pertaining to LUSD or any other respondent. Moreover, the complaint fails to provide a proposed resolution of the problem(s) to the extent known and available to the Student at the time. In sum, the complaint does not give LUSD enough information to provide an awareness and understanding of the issues forming the basis of the complaint.

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>9</sup> Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

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<sup>7</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>8</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).

<sup>9</sup> Ed. Code, § 56505.

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>10</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: January 24, 2011

/s/

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STELLA OWENS-MURRELL  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>10</sup> The filing of an amended complaint will restart the applicable timelines for a due process hearing.