

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

LAWNDALE ELEMENTARY SCHOOL  
DISTRICT and LOS ANGELES UNIFIED  
SCHOOL DISTRICT.

OAH CASE NO. 2009060892

DETERMINATION OF SUFFICIENCY  
OF DUE PROCESS COMPLAINT

On June 15, 2009, Student filed a Due Process Hearing Request<sup>1</sup> (complaint) naming the Lawndale Elementary School District (Lawndale)<sup>2</sup> and the Los Angeles Unified School District (LAUSD) as respondents.

On June 29, 2009, Lawndale filed a Notice of Insufficiency (NOI) as to Student's complaint.

APPLICABLE LAW

The respondent to a due process hearing request has the right to challenge the sufficiency of the complaint. (20 U.S.C. § 1415(b) & (c).)<sup>3</sup> The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of 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. (§ 1415(b)(7)(A)(ii)(III) & (IV).) The purpose of these requirements is to promote fairness by providing respondents with a specific understanding of the allegations and to provide a school district with sufficient information to make a specific response to the complaint as

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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> Lawndale was incorrectly identified in Student's complaint as the Lawndale Unified School District.

<sup>3</sup> All statutory citations are to Title 20 United States Code unless otherwise noted.

required by section 1415(c)(2)(B), and to participate in a resolution session and mediation under section 1415, subsections (e) and (f). In addition, fundamental principles of due process apply to administrative proceedings in special education matters. The respondent is entitled to know the nature of the specific allegations being made against it, such that respondent may be able to prepare a defense. (*Tadano v. Manney* (9th Cir. 1947) 160 F.2d 665, 667; *Hornsby v. Allen* (5th Cir. 1964) 326 F.2d 605, 608.)

## DISCUSSION

Student's complaint does not allege specifically numbered issues. His complaint alleges, generally, that Student was denied a free appropriate public education (FAPE) during the last two years by both Lawndale and LAUSD. He alleges that he was first found eligible for special education and related services under the eligibility category of specific learning disability (SLD) and received services through individualized education programs (IEPS) under that eligibility. Student alleges that his IEP team at Lawndale proposed changing his eligibility category to emotionally disturbed (ED) but that his parent did not agree. Student also alleges that his Lawndale IEP team recommended unspecified accommodations and a change in eligibility category to other health impaired (OHI), but that none of the accommodations were ever implemented by Lawndale. Student also alleges that when he transferred to a school within the LAUSD, LAUSD improperly classified him as eligible under the category of ED. Student alleges generally that both respondent school districts denied him a FAPE.

Student's complaint is deficient for several reasons. His complaint is unclear as to which allegations apply to which respondent school district. Student alleges generally that the placements offered by both school districts were inappropriate, but he fails to allege with specificity why each placement was inappropriate or what he required with regard to placement and services in order to receive a FAPE. Student fails to identify his unique needs, fails to identify what type of educational services should have been provided by each named respondent, and what type of related services he required but did not receive. Student alleges that his placement at LAUSD was inappropriate because other Students had more behavioral problems than did he, but fails to state why he did not receive educational benefit from the placement and why the other students' behavioral issues impeded his right to a FAPE. Student alleges that accommodations from his August 12, 2008 IEP were not implemented, but fails to identify what those accommodations were. Student states that his parent disagreed with his April 30, 2008 IEP, but does not identify the specific areas with which she disagreed. Additionally, Student alleges that he failed to progress under his IEPS from both respondents, but fails to state specific facts addressing in what areas he failed to progress or any facts supporting his contention.

Student's complaint is insufficiently pled in that it fails to provide the respondent school districts with the required notice of a description of the problem and the facts relating to the problem. As discussed above, a respondent is entitled to know the basis of each claim and the nature of the specific allegations being made against it, with respect to each issue or problem, so that the respondent may be able to prepare a response, prepare for a resolution

meeting, or prepare a defense for hearing. For the reasons described above, Student's complaint is insufficient because it does not comply with the requirements of Section 1415(b)(7).

Additionally, a complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (§1415(b)(7)(A)(ii)(IV).) The proposed resolutions stated in Student's complaint are not well-defined. Student requests an order that LAUSD provide him with a placement at a non-public school, but he fails to either identify a specific school or to identify the type of school he requires. Student also requests an order that the respondent school districts provide him with educational therapy but he fails to state what type of educational therapy he requires. Student's proposed resolutions therefore are also insufficiently pled.

### ORDER

1. Pursuant to section 1415(c)(2)(D), Student's complaint, including his proposed resolutions, is insufficiently pled, and Lawndale's notice of insufficiency is granted.
2. Pursuant to section 1415(c)(2)(E)(i)(II), Student shall be permitted to file an amended complaint.<sup>4</sup>
3. The amended complaint shall comply with the requirements of 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: July 02, 2009

/s/

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DARRELL LEPKOWSKY  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>4</sup> The filing of an amended complaint will restart the applicable timelines for a due process hearing.