

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL  
DISTRICT AND LOS ANGELES UNIFIED  
SCHOOL DISTRICT SPECIAL  
EDUCATION LOCAL PLAN AREA.

OAH CASE NO. 2009110438

DETERMINATION OF PARTIAL  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

PROCEDURAL HISTORY

On November 10, 2009, Jennifer Guze Campbell, attorney for Student, filed an initial Due Process Hearing Request<sup>1</sup> (complaint) against the Los Angeles Unified School District (District) and the Los Angeles Unified School District Special Education Local Plan Area (SELPA).

On November 24, 2009, Mampre R. Pomakian, attorney for District, filed a Notice of Insufficiency (NOI) concerning Student's complaint.

On November 25, 2009, the Office of Administrative Hearings (OAH) granted District's NOI. The complaint stated four problems. OAH held that the complaint's first three problems did not identify a problem relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of Student, or the provision of a FAPE to Student, as required by the IDEA. OAH held that the fourth problem lacked factual information and was thus also legally insufficient.

On December 9, 2009, Student filed an Amendment to Request for Due Process Hearing (amended complaint). On December 24, 2009, District filed a timely NOI concerning the amended complaint. As discussed below, the amended complaint is partially sufficient.

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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 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>2</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 determination of whether a complaint is sufficient is made by looking at the face of the complaint. (§1415(c)(2)(D).) In general, fundamental principles of due process entitle the respondent to know the nature of the allegations being made against it, such that respondent may 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

The amended complaint states three “Complaints.” The first two are legally insufficient. The NOI is granted with respect to them. The third Complaint, while sparse, contains sufficient information to pass muster under the IDEA’s minimal pleading requirements.

The amended complaint’s first and second Complaints suffer from the same defects as the first three problems in the initial complaint. They restate that respondents have failed to recognize that Student is represented by counsel, or to provide Student’s counsel with educational records. Student asserts that by failing to communicate with her counsel, respondents have procedurally impeded her parents’ right to participate in the decision-making process regarding the provision of FAPE. As previously held with respect to the initial complaint’s similar allegations, Student fails to identify a problem relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of Student, or the provision of a FAPE to Student. Complaints Nos. 1 and 2 are therefore not legally sufficient.

The amended complaint’s third Complaint states that Student has not been receiving educational benefit from her past IEP plans and that, within the two year statute of limitations, respondents have failed to: (1) convene an IEP meeting; (2) properly assess Student in each of her suspected areas of disability; and (3) offer Student appropriate placement and services and/or implement the terms of an appropriate IEP. As a proposed resolution, it seeks placement in a nonpublic school. The third Complaint is sufficient to put

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<sup>2</sup> All statutory citations are to Title 20 United States Code unless otherwise noted.

respondents on notice of the issues forming the basis of the complaint, such that respondents can respond to the complaint and participate in a resolution session. The IDEA does not require that the person or entity filing a claim plead facts with particularity. It requires only a short and plain statement of the claims and the grounds upon which they rest. In other words, the claim must answer the questions who (i.e. the District), what (what are you claiming), how (what in general are the salient facts regarding your claim/the grounds) and when (timeframe). Thus, the complaint is sufficient to give respondents notice of the nature of the problem relating to the provision of a free appropriate public education (FAPE).

#### ORDER

1. Pursuant to section 1415(b)(7)(A)(ii), the third Complaint in the amended complaint is sufficient.
2. Pursuant to section 1415(c)(2)(D), the first two Complaints in the amended complaint are insufficiently pled.
3. Pursuant to section 1415(c)(2)(E)(i)(II), Student shall be permitted to file another amended complaint.<sup>3</sup>
4. 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.
5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Student's third Complaint.

Dated: December 29, 2009

/s/

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JUNE R. LEHRMAN  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>3</sup> The filing of an amended complaint will restart the applicable timelines for a due process hearing.