

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

IRVINE UNIFIED SCHOOL DISTRICT  
and ORANGE COUNTY HEALTH CARE  
AGENCY.

OAH CASE NO. 2010030994

DETERMINATION OF SUFFICIENCY  
OF DUE PROCESS COMPLAINT

On March 12, 2010, Parent on behalf of Student (herein collectively referred to as Student) filed a Due Process Hearing Request<sup>1</sup> (complaint) naming the Irvine Unified School District (District) and the Orange County Health Care Agency (OCHCA) as respondents.

On March 17, 2010, OCHCA 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 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 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>

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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)

<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.

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 ALJ.<sup>7</sup>

A student who has been determined to be an individual with exceptional needs or is suspected of needing mental health services may, after the student’s parent has consented, be referred to a community mental health service in accordance with Government Code section 7576 when the student meets criteria for referral specified in California Code of Regulations, title 2, section 60040. The referral may only be made once the student’s school district has, in accordance with specific requirements, prepared a referral package and provided it to the community mental health service. (Ed. Code, § 56331, subd. (a); Cal. Code Regs., tit. 14, § 60040, subd. (a).)

## DISCUSSION

Student’s complaint alleges three claims, which are all insufficiently pled as to OCHCA in that the complaint fails to provide OCHCA with the required notice of a description of the problems and the facts relating to the problems. Issue One, as elaborated in the complaint’s factual discussion, alleges that the District failed in its child find obligations to Student from March 2008 to the present. In Issue Two, Student alleges that the District refused and failed to assess Student in all areas of disability, specifically in the area of emotional disturbance, from March 2008 to September 9, 2009. In his factual discussion, Student also alleges that the District denied him a free appropriate public education by failing to refer him to OCHCA (referred to as “Mental Health” in the complaint), presumably for a mental health evaluation. In Issue Three, Student alleges that the District denied him a FAPE from March 2008 to November 17, 2009, due to the District’s failure and continued refusal to properly and timely identify Student’s unique needs. Student further alleges that the District denied him a FAPE when it allegedly failed to identify and provide him with appropriate goals and objectives and offered him inappropriate placements that failed to provide him with educational benefit.

OCHCA is not mentioned at all in the three issues raised by Student or mentioned in the factual discussion supporting those issues, except to the extent that he alleges that the District failed to refer him for a mental health evaluation. OCHCA is not mentioned in the

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<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).

complaint specifically until the section containing Student's proposed resolutions. In his first and fourth resolutions, Student requests reimbursement of specified expenses based on the District's and OCHCA's alleged failure to provide him with a FAPE. However, nowhere in the complaint is there any discussion of what Student contends OCHCA did or did not do that resulted in the denial to him of a FAPE. All allegations in the complaint reference failures attributed to the actions, or lack of action, by the District. Indeed, one of the allegations in Student's complaint is that the District failed to refer Student to OCHCA for a mental health assessment. There is thus no indication that OCHCA had any contact with Student, had any obligation to Student, or participated in the alleged failure to provide Student with a FAPE. There is simply no nexus between the facts alleged in the complaint and any action or inaction by OCHCA.

### ORDER

1. Student's complaint is insufficiently pled under section 1415(c)(2)(D) as to OCHCA.
2. Student shall be permitted to file an amended complaint under section 1415(c)(2)(E)(i)(II).<sup>8</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 as to OCHCA and will proceed solely as to the allegations against the District.
5. All dates previously set in this matter will remain calendared unless Student files an amended complaint.

Dated: March 23, 2010

/s/

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DARRELL LEPKOWSKY  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>8</sup> The filing of an amended complaint will restart the applicable timelines for a due process hearing.