

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PASADENA UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2010071371

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On July 29, 2010, Barbara Dixon, attorney for Student, filed a Due Process Hearing Request<sup>1</sup> (complaint) against the Pasadena Unified School District (District). On August 13, 2010, Sharon A. Watt, attorney for District, 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 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 Administrative Law Judge.<sup>7</sup>

## DISCUSSION

Student’s complaint raises five issues for determination. Issue No. 1 in Student’s complaint asserts that District denied Student a FAPE during the 2008-2009 and 2009-2010 school years (SYs) because District failed to appropriately assess Student and identify her visual-motor integration deficit as an area of need. Student provides a sufficient factual basis for her contention that during the 2008-2009 and 2009-2010 SYs, District was or should have been on notice that Student had a deficit in the area of visual-motor integration. Accordingly, Issue No. 1 is legally sufficient.

Issue No. 2 in Student’s complaint contends that District denied Student a FAPE during the 2008-2009 SY because it failed to provide the appropriate level of special education instructional support in the form of resource specialist program services. Student provides a sufficient factual basis for her contention that District did not provide an appropriate level of resource specialist program services. Accordingly, Issue No. 2 is legally sufficient.

Student alleges in Issue No. 3 that District denied Student a FAPE during the 2009-2010 SY when it failed to offer Student counseling services to address her social emotional needs. Student provides a sufficient factual basis for her contention that District knew of her social emotional needs and failed to offer required counseling services. Therefore, Issue No. 3 is legally sufficient.

Issue No. 4 in Student’s complaint asserts that District failed to offer Student a FAPE for the 2010-2011 SY because District failed to offer the appropriate level of special education services. The complaint identifies the services Student is challenging and contends that District has failed to offer counseling services, and did not address her needs in

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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).

the areas of visual-motor integration, social emotional needs and attention deficits. Student has provided a sufficient factual basis for her contentions and Issue No. 4 is legally sufficient.

Issue No. 5 of Student's complaint contends that due to the alleged denials of FAPE during the 2008-2009 and 2009-2010 SYs, Student is entitled to compensatory education. Issue No. 5 is appropriately characterized as a proposed resolution. As additional proposed resolutions, Student seeks compensatory education, compensatory and prospective counseling services, an assistive technology assessment, a behavior support plan, an increase in special education instructional support services and accommodations in the general education environment. A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (20 U.S.C. §1415(b)(7)(A)(ii)(IV).) Student has met the statutorily required standard of stating a resolution to the extent known and available to her at the time.

The facts alleged in Student's complaint are sufficient to put the District on notice of the issues forming the basis of the complaint. Student's complaint identifies the issues and adequate related facts about the problems to permit District to respond to the complaint and participate in a resolution session and mediation. The complaint identifies resolutions known to Student at the time. Accordingly, Student's complaint is sufficient.

#### ORDER

1. The complaint is sufficient under section title 20 United States Code section 1415(b)(7)(A)(ii).
2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: August 17, 2010

/s/  
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BOB VARMA  
Administrative Law Judge  
Office of Administrative Hearings