

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BAKERSFIELD CITY SCHOOL  
DISTRICT.

OAH CASE NO. 2010080123

DETERMINATION OF SUFFICIENCY  
OF DUE PROCESS COMPLAINT

On August 2, 2010 Student filed a Due Process Hearing Request<sup>1</sup> (complaint) naming Bakersfield City School District (District) as the respondent. The complaint alleges one issue: That Student should have been found eligible for special education and related services to address his lack of academic achievement, lack of focus, and need for individual attention in school. On its face, the complaint has clearly stated a “child find” claim. In support of the allegations, Student has alleged facts showing that he has not had academic success despite repeating a prior grade, he has been diagnosed with ADHD, and there are also concerns about Student experiencing depression. It can be inferred from the factual allegations that the allegations are referring to the time period within two years prior to the date of filing the complaint. As remedies, Student seeks eligibility, an appropriate placement, aide support, counseling, compensatory tutoring services, and an IEE. On August 6, 2010, District timely filed a Notice of Insufficiency (NOI), contending that the complaint was insufficient because it did not identify the assessments District should have performed, a specific time period, or a specific eligibility category. As discussed below, the complaint is sufficient.

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

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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). All subsequent statutory references are to title 20 United States Code, unless otherwise indicated.

<sup>2</sup> § 1415(b) & (c).

<sup>3</sup> § 1415(b)(7)(A)(ii)(III) & (IV)

information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.<sup>4</sup>

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>

Here, the District has all of the notice it needs to respond to the complaint. In essence, Student alleges that despite repeating a prior grade, he failed to make academic progress and should have been found eligible for special education. Student has identified ADHD and its accompanying emotional difficulties as a potential source of his academic problems. It is clear that the complaint is addressed to the two year period preceding the filing of the complaint. Student has clearly articulated the proposed resolutions. The complaint is sufficient.

#### ORDER

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

Dated: August 6, 2010

/s/

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RICHARD T. BREEN  
Administrative Law Judge  
Office of Administrative Hearings

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<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.

<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).