

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

RESCUE UNION ELEMENTARY  
SCHOOL DISTRICT.

OAH CASE NO. 2010100648

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On October 07, 2010, F. Richard Ruderman, attorney for Student, filed a Due Process Hearing Request<sup>1</sup> (complaint) naming Rescue Union Elementary School District (District). On October 18, 2010, Sally Jensen Dutcher, 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 Individuals with Disabilities Education Act 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>

## DISCUSSION

The facts alleged in Student’s complaint are sufficient to put District on notice of the issues forming the basis of the complaint. Student alleges three issues. In issue one, Student alleges District failed to conduct an appropriate assessment in October 2008. Student’s complaint includes sufficient related facts that present a description of incidents of Student’s behavior at school, specifically expulsion and drug possession, which led to a referral for a special education assessment. Student asserts facts to indicate that District determined Student to be ineligible for special education, which was contrary to his test results, rating scales, and extensive mental health history. Student has stated sufficient facts supporting this claim and the claim is legally sufficient.

In issue two, Student alleges that during the 2008-2009 school year (SY), District failed to find Student eligible for special education as emotionally disturbed, failed to offer and provide special education services, improperly expelled Student, and misrepresented Student’s psychological test results, thereby denying Student a FAPE. In addition to the facts previously asserted for issue one, Student alleges facts to describe how District failed to adequately disclose Student’s psychological assessment results at the IEP meeting of October 9, 2008, that District did not offer any special education placement or services during the 2008-2009 SY, that Student’s marijuana use which led to his expulsion was related to his disability, and that Student’s school placement did not provide the necessary mental health support. Student has stated sufficient facts supporting this claim and the claim is legally sufficient.

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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).

In issue three, Student alleges that during the 2009-2010 SY, District failed to find Student eligible for special education as emotionally disturbed, failed to offer and provide special education services, failed to refer Student for a new special education assessment, and failed to provide Student's parent with his educational records. In addition to the facts previously asserted for issues one and two, Student asserts that he made poor academic progress during the 2009-2010 SY due to his emotional disturbance. Student describes a threatened suicide attempt, his subsequent hospitalization and psychiatric treatment. Student claims District was aware that his mental health was interfering with his academic progress. Student has stated sufficient facts supporting this claim and the claim is legally sufficient.

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. Accordingly, Student's three issues are legally sufficient.

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's proposed resolutions request an independent psychological assessment, reimbursement for costs, and compensatory education. Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

#### 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: October 21, 2010

/s/  
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TROY K. TAIRA  
Administrative Law Judge  
Office of Administrative Hearings