

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

EDUCATIONAL RIGHTS HOLDER ON
BEHALF OF STUDENT,

v.

CALIFORNIA DEPARTMENT OF
EDUCATION, CALIFORNIA HEALTH
AND HUMAN SERVICES AGENCY,
CALIFORNIA DEPARTMENT OF
MENTAL HEALTH, LOS ANGELES
UNIFIED SCHOOL DISTRICT, LOS
ANGELES COUNTY OFFICE OF
EDUCATION, AND LOS ANGELES
COUNTY DEPARTMENT OF MENTAL
HEALTH

OAH CASE NO. 2010110301

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On November 8, 2010, Student filed a Due Process Hearing Request¹ (complaint) against the agencies named in the caption. On November 21, 2010, the Los Angeles Unified School District (District) filed a Notice of Insufficiency (NOI) as to Student's complaint.²

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.³ 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).

¹ 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).

² The NOI was faxed to the Office of Administrative Hearings (OAH) after business hours on Friday, November 19, 2010, and was therefore deemed filed on the next regular business day. (1 C.C.R. § 1006, subd. (h).)

³ 20 U.S.C. § 1415(b) & (c).

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.⁴ 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.⁵

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁶ 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.⁷ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁸

DISCUSSION

The District first argues that Student’s complaint does not allege the District is or was the local educational agency responsible for providing Student a FAPE. However, the complaint alleges that “the Los Angeles County Office of Education [LACOE] and Los Angeles Unified School District ... are the local educational agencies ... charged with providing Student with an appropriate educational program.”

⁴20 U.S.C. § 1415(b) (7) (A) (ii) (III) & (IV).

⁵ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁶ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁷ *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.].

⁸ 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 District next argues that Student’s complaint does not allege any violation of special education law by the District. The complaint does show that, for most of the time period addressed, Student was in juvenile hall and was the responsibility of LACOE. However, it also alleges that between February and July 2010 Student “enrolled and attended South Bay High School in LAUSD, which failed to identify [Student] as a special education student and provide necessary and appropriate instruction and services.” In other portions of the complaint Student alleges that he has been eligible for special education since January 2002, and that in order to provide him a FAPE, he would require counseling for himself and his parent, psychological services, planning and case management, rehabilitation counseling, transportation, and residential placement.

These allegations are sufficient to inform the District of Student’s claims that, between February and July 2010, the District failed to recognize his eligibility for special education and related services and failed to provide the seven specifically named elements of a FAPE. Those allegations are ample to allow the District to prepare for due process hearing and participate in a resolution session, mediation, and hearing.⁹

ORDER

1. The complaint is deemed sufficient under title 20 United States Code section 1415(b)(7)(A)(ii) insofar as it makes allegations and proposes resolutions particular to Student and the District.

2. All mediation, prehearing conference, and hearing dates in this matter shall remain on calendar.

Dated: November 22, 2010

/s/

CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings

⁹ The District also argues that OAH has no jurisdiction over class actions. That issue will be addressed in a separate ruling on LACOE’s pending motion to dismiss.