

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

EL SEGUNDO UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2011020817

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT AND ORDER ON  
MOTION TO DISMISS

On February 22, 2011, Student filed a Due Process Hearing Request (complaint) naming District as the respondent. Student alleged he was denied a FAPE beginning February of 2008 because, he was misdiagnosed as a student with mental retardation. Student alleges his curriculum was modified and he should have had grade level curriculum, and that as a result, he did not receive educational benefit. As proposed remedies, Student requests a non-public school and compensatory services in academic areas. On March 4, 2011, District timely filed a Notice of Insufficiency (NOI), alleging that the complaint did not give it sufficient notice of the issues. District also filed a motion to dismiss any claims prior to February of 2009, because in general, IDEA claims are limited to two years prior to the date of filing. As discussed below, the complaint is insufficient, but Student will be given an opportunity to amend. As a result, District's motion to dismiss is moot at this time.

*NOI*

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.<sup>1</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>2</sup> These requirements prevent vague and confusing complaints, and promote fairness by providing the

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<sup>1</sup> 20 U.S.C. § 1415(b) & (c).

<sup>2</sup> 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.<sup>3</sup>

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”<sup>4</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>5</sup> Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.<sup>6</sup>

Here, it cannot be determined what the “nature of the problem” is based on the allegations of the complaint. Specifically, it cannot be determined whether Student is alleging that his eligibility category was incorrect, whether certain assessments were incorrect, whether the modifications to curriculum listed in an IEP were incorrect, or some other problem with the services and supports in his IEP cause a denial of FAPE. Although Student has clearly stated the proposed resolutions, District is left to guess as to why those proposed resolutions would be appropriate. Thus, as alleged, the complaint is insufficient to put the District on notice of the issues for purposes of preparing for resolution session, mediation, or hearing. Because the complaint is insufficient, it will be dismissed; however, parents will have a chance to amend it.

Parents who are not represented by an attorney may request that the Office of Administrative Hearings (OAH) provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint.<sup>7</sup> Parents are

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<sup>3</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>4</sup> Sen. Rep. No. 108-185, *supra*, at p. 34.

<sup>5</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>6</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).  
<sup>7</sup> Ed. Code, § 56505.

encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

*Motion to Dismiss*

OAH will generally grant motions to dismiss allegations that are facially outside of OAH jurisdiction, e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc.... District is correct that in general, IDEA due process hearings are limited to two years prior to the date of filing absent some limited exceptions. (Ed. Code, § 56505, subd. (l).) Here, because the complaint is insufficient, and subject to dismissal unless amended, District's Motion to Dismiss need not be ruled on at this time. Accordingly, District's Motion to Dismiss is denied as moot.

ORDER

1. Student's complaint is insufficiently pled under section Title 20 United States Code 1415(c)(2)(D).
2. Student shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).<sup>8</sup>
3. The amended complaint shall comply with the requirements of Title 20 United States Code 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.
5. District's Motion to Dismiss is denied as moot in light of the above.
6. All dates previously set in this matter are vacated.

Dated: March 8, 2011

/s/

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RICHARD T. BREEN  
Presiding Administrative Law Judge (acting)  
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.