

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MANZANITA ELEMENTARY SCHOOL  
DISTRICT.

OAH CASE NO. 2011050901

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On May 23, 2011 Student filed a Due Process Hearing Request<sup>1</sup> (complaint) naming District. The complaint alleged that during the 2011-2011 school year, when Student was enrolled in the District, it denied him a FAPE by failing to assess in all areas of suspected disability, failed to complete assessments in a timely manner, failed to offer him an IEP with supports and related services, and failed to conduct a manifestation determination.

On June 1, 2011, District filed a Notice of Insufficiency (NOI) as to Student's complaint, alleging the same grounds as its Motion to Dismiss Student's complaint. It alleged that Student is not a Student enrolled in its District and that it owes him no duty. It alleged it did not violate section 504 because Student didn't qualify for services. It alleged that it had no duty to assess Student because at the present time, he does not live within their District. District alleged that Student's proposed resolutions are insufficient because Student seeks compensatory education from them when he is not currently enrolled in their District.

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

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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).

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>

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

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 problem to permit District to respond to the complaint and participate in a resolution session and] mediation.

Student alleged that he was enrolled in the District, and that during that time, the District committed several violations of the IDEA regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child and the provision of a FAPE to a child. Student alleged that District refused to assess Student, and later began to assess Student for eligibility when it expelled him without a manifestation determination, and then improperly terminated its assessment of Student. An

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<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.

<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).

NOI is addressed to the adequacy of the notice provided by the complaint, not whether the complaint has merit. Because the issues and facts alleged give the District sufficient notice, the complaint is sufficient.

Student's proposed resolutions request declaratory relief, compensatory education, re-enrollment in the District, and the completion of its assessment of Student. 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).) The proposed resolution stated in Student's complaint is well-defined. Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time. District has received the notice it is entitled to.

### ORDER

1. The complaint is sufficient under 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: June 06, 2011

/s/

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DEBORAH MYERS-CREGAR  
Administrative Law Judge  
Office of Administrative Hearings