

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Consolidated Matters of:  PARENT ON BEHALF OF STUDENT,  v.  SOUTH PASADENA UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2011060001
SOUTH PASADENA UNIFIED SCHOOL DISTRICT,  v.  PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2011050857  ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On May 19, 2011, South Pasadena Unified School District (District) filed a Request for Due Process Hearing (complaint), naming Student.<sup>1</sup> On May 27, 2011, Student filed a complaint naming District. On June 9, 2011, the cases were consolidated. The dates set for District's complaint were vacated, and the consolidated cases were continued to the dates scheduled for Student's complaint.

On June 6, 2011, Student filed an amended complaint, which was treated as a Motion to Amend. On June 13, 2011, the Office of Administrative Hearings granted Student's Motion to Amend her complaint. On June 14, 2011, District filed a Notice of Insufficiency (NOI) as to Student's complaint.<sup>2</sup>

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.<sup>3</sup> The party filing the complaint is not entitled to a hearing

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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> District's NOI included a Motion to Dismiss which will be addressed in a separate order.

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>4</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>5</sup>

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”<sup>6</sup> The pleading requirements should be liberally construed in light of the broad remedial purposes of the Individuals with Disabilities Education Act (IDEA) and the relative informality of the due process hearings it authorizes.<sup>7</sup> Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.<sup>8</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’s complaint identifies the issues and

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<sup>3</sup> 20 U.S.C. § 1415(b) & (c).

<sup>4</sup> 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

<sup>5</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>6</sup> Sen. Rep. No. 108-185, *supra*, at p. 34.

<sup>7</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>8</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).

adequate related facts about the problem to permit District to respond to the complaint and participate in a resolution session and mediation.

Student alleges five issues. The first issue alleges District failed to provide special education services during the 2010 – 2011 school year. The second issue alleges District failed to provide Student’s records, including the triennial individualized education program (IEP), logs, and documents returned to District as undelivered. The third and fourth issues allege District failed to comply with specific terms of a 2009 settlement agreement.<sup>9</sup> The fifth issue alleges District failed to complete Student’s triennial IEP.

These issues are sufficiently pled to put District on notice as to the basis of Student’s claims reading the complaint in its entirety and liberally construing it in light of the broad remedial purposes of the IDEA and the relative informality of the due process hearings. Therefore, Student’s statement of the five issues is sufficient.

Student’s proposed resolutions request private school placement, reimbursement of expenses, delivery of records, progress reports, and completion of the triennial IEP. 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 has met the statutorily required standard of stating a resolution to the extent known and available to her at the time.

#### 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 15, 2011

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

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<sup>9</sup> District alleges Student’s issues number three and four are outside of the Office of Administrative Hearings’ jurisdiction. The only determination to be made upon the filing of an NOI is the sufficiency of the complaint on its face. Jurisdictional contentions will be addressed separately in District’s Motion to Dismiss or may be presented at hearing as an affirmative defense.