

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

VICTOR ELEMENTARY SCHOOL  
DISTRICT.

OAH CASE NO. 2011061183

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On June 27, 2011, Karen K. Brent, Attorney for Student, filed a Due Process Hearing Request<sup>1</sup> (complaint) naming Victor Elementary School District (District). On July 6, 2011, Jack B. Clarke, Jr., 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 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

Student’s complaint alleges three claims in the complaint, two of which are sufficient and one which is insufficient. The issues are discussed below.

*Issue No. 1:* claims that District denied Student a FAPE by failing to provide comprehensive assessments in all areas of suspected disability from August 2010 through present. Given that Student claims a short period of time and the complaint lists the areas of suspected disability, plus District holds the records for Student, Student has pled sufficient facts that allow District to identify the IEP team meetings where discussions related to Student took place. Therefore, Student has sufficiently pled Issue No. 1.

*Issue No. 2:* claims that District denied Student a FAPE by failing to tailor an appropriate educational program to meet her individual and unique needs. Although this issue also relates to a short period of time and District holds Student’s records, Student fails to present any facts related to the discrepancies in District’s program for Student. Instead, Student provides excerpts from a January 2005 United States Government Accountability Office related to preschool programs for autistic children. This report provides no facts related to Student. Student has insufficiently pled Issue No. 2.

*Issue No. 3:* claims that District violated Student’s procedural rights by failing to provide Parent with a full and complete copy of Student’s educational records. Here Student provides a list of records not provided by District as well as the time periods involved. Student has sufficiently pled Issue No. 3.

Regarding proposed resolutions, Student seeks: a) an independent educational evaluation; b) compensatory education; c) a special circumstances instructional assistance

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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).

aide; d) a copy of all Student's educational records. Student's proposed resolution is sufficient to the extent know by Student at the time the complaint was filed.

Issues No. 1 and No. 3 are sufficiently pled to put District on notice as to the basis of Student's claims.

With regard to Issue No. 2, Student fails to allege any facts related to the claim. Therefore, Student has failed to state sufficient facts supporting this claim, and the claim is insufficient.

### ORDER

1. Issues No. 1 and No. 3 of Student's complaint are sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

2. Issue No. 2 of Student's complaint is insufficiently pled under Title 20 United States Code section 1415(c)(2)(D).

3. 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>

4. 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.

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues No 1 and No. 3 in Student's complaint.

Dated: July 8, 2011

/s/

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MICHAEL G. BARTH  
Administrative Law Judge  
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.