

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

RIVERSIDE UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2011081130

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On August 26, 2011 Student filed a Due Process Hearing Request<sup>1</sup> (complaint) naming District as the respondent. On September 9, 2011, District filed a Notice of Insufficiency (NOI) as to the complaint. As discussed below, Issues 2, 3, and 4 of the complaint are not sufficiently pled, and the NOI is therefore granted.

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

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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).

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

Student’s complaint alleges four claims in the complaint, three of which are insufficiently pled as discussed below. Claim 1 alleges that District denied Student a FAPE for the 2010-2011 school year, by offering inappropriate placement, and seeks a general education placement as the proposed resolution. This is sufficiently pled.

Claims 2, 3, and 4, however, are insufficiently pled in that they fail to provide District with the required notice of a description of the problem and the facts relating to the problem. Claim 2 states that District denied Student a FAPE by failing to “appropriately assess [Student] in all areas of occupational therapy.” However, the complaint fails to state any facts relating to whether or when Student was (or was not) assessed in this area of need, or if assessed in what respects the assessment was inappropriate. Claim 3 states that District denied Student a FAPE by failing to “appropriately assess [Student] in the area of suspected disability.” However, the complaint fails to state any facts relating to whether or when Student was (or was not) assessed, which areas of need were or were not assessed, or if assessed in certain areas of need then in what respects those assessment were inappropriate. Claim 4 states that District denied Student a FAPE by failing to “implement some necessary accommodations in [Student’s] December 8, 2010 annual IEP, February 25, 2011, March 30,

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<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).

2011 and May 26, 2011 [IEPs].” However, the complaint fails to state any facts relating to what accommodations in these IEPs were not implemented. Furthermore with respect to these claims, the complaint fails to state any proposed resolutions.

A parent who is 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>8</sup> Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

### ORDER

1. Issue 1 of Student’s complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

2. Issues 2, 3 and 4 of Student’s complaint are 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>9</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 Issue 1 in the complaint.

Dated: September 20, 2011

/s/

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JUNE R. LEHRMAN  
Administrative Law Judge  
Office of Administrative Hearings

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8 Ed. Code, § 56505.

<sup>9</sup> The filing of an amended complaint will restart the applicable timelines for a due process hearing.