

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENTS ON BEHALF OF STUDENT,

OAH CASE NO. 2011090698

v.

LUCIA MAR UNIFIED SCHOOL DISTRICT,  
SAN LUIS OBISPO COUNTY OFFICE OF  
EDUCATION.

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LUCIA MAR UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2011070196

v.

PARENTS ON BEHALF OF STUDENT.

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On September 19, 2011, Student’s parents, acting on behalf of Student (Student), filed a due process hearing request<sup>1</sup> naming the Lucia Mar Unified School District (District) and San Luis Obispo County Office of Education (COE). On February 1, 2012, Student filed an amended due process hearing request (amended complaint) naming the same parties.

On February 16, 2012, COE filed a notice of insufficiency (NOI) and request to dismiss the amended 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).

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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).

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>

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 amended complaint is 38 pages long. Much of the document consists of a detailed narrative of events that have occurred regarding the contact between Student’s parents and the District/COE over the past few years. Student lists eight issues for hearing on page 2 of the amended complaint. On pages 28 – 38, Student lists many more issues, some of which have subparts. Some of these latter issues also include narrative descriptions of problems.

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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).

COE argues that the amended complaint is confusing as to the issues for hearing, and that it is unclear which claims Student is making against COE. COE further argues that Student is making allegations regarding ongoing individualized education program (IEP) discussions rather than an existing IEP offer. COE argues that the complaint should be dismissed or found insufficient.

COE's objections are well taken as to many of the allegations. Although the amended complaint refers to many different IEP offers, it is not clear whether the eight issues listed on page two refer to those past IEP offers or ongoing IEP discussions between the parties. The language which precedes the eight issues on page two states that the District and COE "are failing to offer a FAPE to Student now by...."

The second set of issues starts on page 28 of the amended complaint. Student lists issues one through three regarding a May 2009 IEP offer. Those issues appear to be outside the statute of limitations. Some of the language in the issues may involve later events, but it is not clear from the allegations. Those allegations are not sufficiently stated.

The next heading, starting on page 29, refers to the "2010-2011 School Year (Nov 2010/Apr 2011 IEP offer) AND 2011-2012 School Year through Nov 9, 2011 (including Jun 2011 IEP offer)."

Issue four on page 30 of the amended complaint objects to the placement proposed in the November 9, 2010 IEP. Issue five also objects to the placement, though it is not clear whether it is the placement offered at that November 2010 IEP or one of the other IEP's mentioned in the heading. However, it appears that Student is objecting to all the placement offers made in the November 2010, April 2011 and June 2011 IEP offers. Although these two issues could be much more clearly alleged, they are sufficient to go forward.

The next seven issues (six through 12) appear to address ongoing IEP discussions rather than past IEP offers. Issue 13 alleges eight additional sub-issues under the heading "Procedural Violations." These issues do not contain any specific factual allegations to explain when and where they allegedly occurred. For example, issue 13a simply alleges "lack of prior written notice" without any explanation or reference to specific dates or facts. While it is possible that the facts to support these allegations exist within the more than 20 pages of narrative, that is not sufficient for a due process complaint. A District is not required to guess which of the many parts of the narrative refer to which allegation.

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.

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<sup>8</sup> Ed. Code, § 56505.

In her pleading, Student's mother admits that she is not an attorney. It is clear that she worked very hard to try to prepare an adequate complaint. However, at this point, only her allegations regarding the placement offered in the various IEP's are sufficiently alleged. If she wishes to amend again, it is strongly encouraged that she contact OAH to seek mediator assistance in drafting her amended complaint.

Because it is likely that Student's mother will seek to amend her complaint again, any motion to dismiss by the District is premature. Therefore, it is denied without prejudice.

#### ORDER

1. Issue 4 on page 30 of the amended complaint and issue 5 on page 31 of the amended complaint are sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).
2. All other issues in the amended 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 4 on page 30 of the amended complaint and issue 5 on page 31 of the amended complaint.
6. The District's motion to dismiss is denied without prejudice.

Dated: February 17, 2012

/s/

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SUSAN RUFF  
Administrative Law Judge  
Office of Administrative Hearings

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