

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

GARDEN GROVE UNIFIED SCHOOL DISTRICT, WESTMINSTER USD AND WEST ORANGE COUNTY CONSORTIUM.

OAH CASE NO. 2011110757

ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT AND ORDER OF DISMISSAL OF CLAIMS OVER WHICH OAH LACKS JURISDICTION

On November 18, 2011 Parents, on behalf of Student (Student) filed a Request for Due Process Hearing<sup>1</sup> (complaint) naming Garden Grove Unified School District (Garden Grove USD), Westminster School District (Westminster SD), and West Orange County Consortium for Special Education (WOCCSE), as respondents.

On December 5, 2011, Westminster SD and WOCCSE (hereafter collectively referred to as WSD) timely 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

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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).

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 complaint alleges two claims, which are both insufficiently pled, as discussed below. Generally, Student alleges that he is a nine-and-a-half-year-old fourth grader, with the primary eligibility of autism, who lived within WSD until October 2010, at which time he moved into Garden Grove USD. Student refers to his April 2008 triennial IEP, detailing the assessments and reviewing the placement and services. Student also details a June 2010 assessment. Student was found eligible under the categories of speech and language and autistic like behaviors. Student then alleges that his family moved to the Garden Grove USD in October 2010. None of the general allegations thereafter apply to WSD.

Student fails to state that WSD’s assessments, IEPs, placement, and/or related services are insufficient, inappropriate, or deny Student a FAPE in the least restrictive environment (LRE). In fact, the general narrative allegations do not include any expression of dissatisfaction with Student’s special education program until after Student moved into Garden Grove SD.

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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).

In Issue 1, Student states that “Respondents violated IDEA, Section 504 of the Rehabilitation Act of 1973, the civil rights act under 42 U.S.C. §1983, No Child Left Behind, related state laws and regulations, and denied FAPE when it failed to develop a comprehensive appropriate IEP, goals, placement and appropriate levels of DIS services, in the LRE to appropriately address all of [Student]’s known needs to include, but not to be limited to failure to provide: . . .” Student then lists one-and-a-half pages of alleged insufficiencies in assessments, related services, IEP goals, identification of deficits, delivery of services, placement, behavioral intervention, inclusion services, mental health services, and medical protocols.

In Issue 1, Student fails to identify any IEP, party or time period relative to the laundry list of complaints. The complaint’s general narrative contains no language that informs WSD which of Student’s Issue 1 assertions apply to them. The complaint must answer the questions of who allegedly denied a FAPE (i.e. which district), what the school district did or did not do (what violation of IDEA is being alleged), how (facts relative to the claim) and when (timeframe). Based upon the present pleading, it is not possible to answer these fundamental questions as to WSD. In fact, the complaint is devoid of information about any WSD act or omission that denied Student a FAPE. Issue 1 fails to provide WSD sufficient information to enable WSD to prepare for the hearing, and participate in resolution sessions and mediation. Accordingly, Issue 1 is insufficient.

Student alleges Issue 2 applies only to Garden Grove USD and, therefore, WSD are not respondents to Issue 2. WSD’s notice of insufficiency as to Issue 2 is therefore moot as unnecessary.

However, both Issues 1 and 2 seek relief under state and federal laws over which OAH has no jurisdiction. OAH has jurisdiction over allegations related to the IDEA. IDEA due process procedures do not extend to “Section 504 of the Rehabilitation Act of 1973, the civil rights act under 42 U.S.C. §1983, No Child Left Behind, related state laws and regulations.” Both Issue 1 and 2 allege adjudication of rights over which OAH has no jurisdiction. To the extent that Issues 1 and 2 allege violations over which OAH is without jurisdiction, the allegations are also dismissed.

## ORDER

1. Issue 1 of Student’s complaint is insufficiently pled as to Westminster SD and WOCCE, under Title 20 United States Code section 1415(c)(2)(D).

2. To the extent Issues 1 and 2 seek relief for anything other than IDEA violations, i.e., “Section 504 of the Rehabilitation Act of 1973, the civil rights act under 42 U.S.C. §1983, No Child Left Behind, related state laws and regulations”, those claims are dismissed for lack of jurisdiction.

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, Westminster SD and WOCCE shall be dismissed as respondents and the hearing shall proceed against respondent Garden Grove USD, only.

Dated: December 09, 2011

/s/

CLIFFORD H. WOOSLEY  
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.