

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

HAYWARD UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2012010739

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On January 26, 2012 Parent, on behalf of Student, filed a Due Process Hearing Request<sup>1</sup> (complaint) naming the Hayward Unified School District (District).

On February 6, 2012, the District 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 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 Individuals with Disabilities Education Act (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 contains six distinct allegations, all of which are insufficiently pled. In issue one, Student alleges that the District’s representative showed up late at an individualized education program (IEP) meeting, and that she told Student’s parents that they would be notified within 15 days after the meeting. Student claims there was no notification and that the representative has not returned Parents’ phone calls. This claim is insufficient because it fails to identify the date of the IEP meeting, who the District representative was, and what the representative was to notify Parents about. Significantly, this allegation fails to state how or why Student was denied a FAPE or how his rights under the IDEA were violated by the District’s actions or lack of actions as alleged.

In issue two, Student alleges that the Principal of Palma Ceia and a special education teacher informed parents that they did not have the resources to provide Student with the education he needs. This allegation fails to specify the names of the Principal or the special education teacher and fails to state when this conversation occurred. Importantly, the allegation fails to state what Student’s educational needs are and how and when the District has failed to address them.

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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 three, Student alleges that his parents have been complaining “since yr one” (sic) that Student is not receiving an education and that the District is dragging its feet and that the school year ends before the District can take any actions. This issue as alleged is insufficient because it fails to specify the exact time frame at issue, fails to allege what actions the District has failed to take, and fails to state how that lack of action has denied Student a FAPE.

In issue four, Student alleges that the District has not notified his parents as to where Student is going to attend “JR.” (presumably junior high school since Student is presently in sixth grade) or how the District is going to help Student. The issue is insufficient because it fails to state how Student’s or parents’ rights have been violated by the District’s alleged failure to indicate Student’s junior high school some six months before the end of the school year.

In issue five, Student alleges that he is a Dwarf who has been seen by eminent specialists who feel there is no medical reason why the District cannot provide Student with an education. This issue is insufficient because it fails to state what Student’s educational needs are and which of those needs the District has failed to address.

In issue six, Student alleges that he has been in District special education programs for four years but has only advanced one year academically. Student asks what excuse the District has for this. Issue six is insufficient because it fails to state what type of progress Student believes he should have made over this period of time and why he believes he should have progressed more than he says he did.

In sum, Student’s complaint is insufficiently pled because it fails to provide the District with the required notice of a description of the problem and the facts relating to the problem so that the District can participate in a resolution session and/or mediation, or to permit it to appropriately respond to the allegations Student has made.

#### MEDIATOR ASSISTANCE FOR NON-REPRESENTED PARENTS

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. Parents may telephone OAH at 916.263.0880, or may contact OAH in writing.

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<sup>8</sup> Education Code, § 56505.

ORDER

1. Student's complaint is insufficiently pled under section title 20 United States Code 1415(c)(2)(D).
2. 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>
3. 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.
4. If Student fails to file a timely amended complaint, the complaint will be dismissed.
5. Student's parents may request assistance in formulating the amended complaint by contacting OAH as detailed above.
6. All dates previously set in this matter are vacated.

Dated: February 16, 2012

/s/

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DARRELL LEPKOWSKY  
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.