

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

NEWPORT-MESA UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2012020439

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On February 13, 2012 Student filed a Due Process Hearing Request<sup>1</sup> (complaint) naming Newport Mesa Unified School District as respondent.

On February 24, 2012, District timely filed a Notice of Insufficiency and Response to Petitioner's Request for Due Process Hearing (NOI) as to Student's complaint. On the same date, Student filed written opposition to the NOI.

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 he has been denied a FAPE for the 2011-2012 school year due to District’s failure to properly manage Student’s ongoing behaviors and physical aggression including the inappropriate use of physical restraint by District staff. The complaint alleges facts identifying particular IEP meetings by date from September 2011 until the date of the complaint, and the results of each IEP team meeting. The complaint alleges particular behavior incidents by date along with specific behavior emergency reports, and the District’s response to each behavior incident. Substantive and procedural issues are alleged with respect to each IEP meeting. Student further contends that, even though Student has repeatedly requested, the District has failed to timely conduct a Functional Analysis Assessment and develop a Behavior Intervention Plan to address these behaviors.

Student’s proposed resolutions include District funding for Independent Educational Evaluations for Functional Analysis Assessment, Speech and Language, and Occupational Therapy, placement in a non-public school and transportation, and a 1:1 aide. Student further requests District develop and implement a Behavior Intervention Plan by a Behavior Intervention Case Manager and that District assign a new IEP team including an Autism

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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).

specialist, a Special Education coordinator, and a school psychologist. Lastly, Student requests compensatory education reimbursement for educationally related services incurred during the 2011 – 2012 school year.

The facts alleged in Student’s complaint are sufficient to put the District on notice of the issues forming the basis of the complaint. Student’s complaint identifies the issues and adequate related facts about the problem to permit District to respond to the complaint and participate in a resolution session and mediation. The IDEA requires only a “description of the nature of the problem” (20 U.S.C. (b)(7)(A)(ii)(III)), a requirement liberally construed in light of the remedial and informal nature of the due process proceedings.

Therefore, Student’s complaint is sufficient.

#### ORDER

1. The complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).
2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: March 05, 2012

/s/  
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MARIAN H. TULLY  
Administrative Law Judge  
Office of Administrative Hearings