

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

WESTMINSTER SCHOOL DISTRICT.

OAH CASE NO. 2012060818

ORDER OF DETERMINATION OF  
INSUFFICIENCY OF DUE PROCESS  
COMPLAINT

On June 18, 2012, Parents on behalf of Student (Student) filed a Due Process Hearing Request<sup>1</sup> (complaint) naming Westminster School District (District) as respondent. On July 24, 2012, the Office of Administrative Hearings (OAH) granted Student's request to file an amended complaint (amended complaint), which was served on the District on August 2, 2012.

On August 7, 2012, the District filed a Notice of Insufficiency (NOI) as to Student's complaint in its entirety. Student has not filed a response or 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).

Student's complaint alleges six claims in the complaint, which are all insufficiently pled as discussed below:

ISSUE ONE: Student claims on February 2, 2012, Parents received a notice for a meeting, which was vague and confusing, and was attended by persons who were unknown to Parents and not members of the District;

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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).

ISSUE TWO: Parents were informed the school site for Student and other autistic children had been changed, without any discussion or prior notice;

ISSUE THREE: Student's advocate was not allowed to utilize the District's interpreter to discuss things with Parents, and instead, Parent was requested to leave;

ISSUE FOUR: Student questions if a valid individualized education plan (IEP) was signed in May, why was a new IEP necessary; why were transition plans not part of the May IEP; and why were there no representatives from Findley if they were required to implement the IEP;

ISSUE FIVE: Parents could not attend a meeting on July 2, and were sent a notice of continuance to July 10. Parents question the wording of the notice;

ISSUE SIX: On July 24, Parents received a letter which indicated the July 24 meeting was mediation; however SELPA referred to meeting as IEP. Parents will not attend meeting without clarification.

REQUESTED REMEDIES: Student has requested: (1) the purpose of each meeting should be made clear; (2) all parties should have an opportunity to present opinions; (3) the level of each meeting should be clarified; parents' assent to IEP is required and parents should be notified prior to decisions; (4) parents should be given time to file for transfers in a timely fashion; and deadlines and procedures should be published and be consistent.

Parents have requested the assistance of an interpreter. Given that English is a second language for Parents, the six issues in the complaint are better understood as a one issue narrative describing a series of facts arising from the District's decision to change the school site of Student's IEP placement. The procedures for doing so are unclear to Parents, resulting in the filing of this complaint. Even assuming this ALJ's interpretation of the issues, this complaint remains vague and ambiguous. More importantly, the issue or issues fail to describe how Student has been denied a free appropriate public education (FAPE). The complaint must allege a factual basis for (1) how Student's education has been affected by the change in the location of Student's placement; and/or (2) how Student's education was affected by the District's alleged failure to adequately explain what was going on to Parents. As a result, Student's complaint is insufficiently pled in that it fails to provide the District with the required notice of a description of the problem and the facts relating to the problem.

Additionally, Student's proposed resolutions do not seek a remedy directed at Student's education or IEP. The remedies appear to request clarification of the District's actions, and a change in the District's policies of communicating with parents. A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (20 U.S.C. §1415(b)(7)(A)(ii)(IV).) The proposed resolutions stated in Student's complaint are not sufficiently defined, and, as written, the complaint seeks remedies which are beyond the jurisdiction of OAH.

It is noted from the OAH file that Parents are seeking mediator assistance to revise their complaint. 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>3</sup> Parents are encouraged to follow through with this request for OAH for assistance if they intend to amend their due process hearing request.

#### 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>4</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. All dates previously set in this matter are vacated.

Dated: August 13, 2012

/s/

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JUDITH PASEWARK  
Administrative Law Judge  
Office of Administrative Hearings

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3 Ed. Code, § 56505.

<sup>4</sup> The filing of an amended complaint will restart the applicable timelines for a due process hearing.