

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

NORWALK-LA MIRADA UNIFIED  
SCHOOL DISTRICT AND LOS ANGELES  
COUNTY OFFICE OF EDUCATION.

OAH CASE NO. 2012080248

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On August 9, 2012, Student filed a Due Process Hearing Request<sup>1</sup> (complaint) with the Office of Administrative Hearings, naming the Norwalk-La Mirada Unified School District (District) and Los Angeles County Office of Education (LACOE). On August 13, 2012, LACOE 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) and Education Code section 56502, subdivision (c)(1).

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); Ed. Code 56502, subd. § (d)(1).

<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 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 issues for hearing. While the complaint alleges that Student attended a program operated by LACOE, the complaint does not contain any factual allegations that LACOE denied Student a FAPE when he attended the LACOE program. All of Student’s allegations refer to the District and that it denied him a FAPE by not offering him an adequate educational program and that it did not assess him in all areas of suspected disability. Accordingly, Student alleges insufficient facts supporting these claims to put LACOE on notice, and therefore the complaint is insufficiently pled against LACOE.<sup>8</sup>

## ORDER

1. Student’s complaint is insufficiently pled as to LACOE under section title 20 United States Code 1415(c)(2)(D).

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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).

<sup>8</sup> Nothing in this order prevents the District from filing its own NOI.

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 as to LACOE.

5. All dates previously set in this matter shall remain on calendar as to the District.

Dated: August 14, 2012

/s/

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PETER PAUL CASTILLO  
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.