

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

WEST CONTRA COSTA UNIFIED  
SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2012080832

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On August 27, 2012, West Contra Costa Unified School District (District) filed a Request for Due Process Hearing<sup>1</sup> (complaint) naming Student.

On September 10, 2012, Student filed a Notice of Insufficiency (NOI) as to District'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 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>

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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).

<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.

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>

A party has the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint in matters involving proposal or refusal to initiate or change the identification, assessment or educational placement of a child; the provision of FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) OAH has jurisdiction to hear due process claims arising under the IDEA. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9<sup>th</sup> Cir. 2000) 223 F.3d 1026, 1028-1029.) Although OAH has granted motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc.) OAH does not have authority to hear and determine the equivalent of a judgment on the pleadings or motion for summary adjudication prior to giving a petitioner the opportunity to develop a factual record at hearing. In light of the liberal notice pleading standards applicable to IDEA due process hearing requests, as a general matter, sufficiently pleaded due process hearing requests should proceed to hearing.

## DISCUSSION

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<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).

District's complaint alleges Student is 12 years old and attends seventh grade at a certified non-public school with related services including transportation and speech services pursuant to an IEP originating in May 2012. The parties dispute the extent to which parents consented to this IEP. District's complaint seeks an order that the placement and services offered in an IEP dated May 14, 2012, and letters dated May 30, July 5 and August 8, 2012, (collectively "IEP") constitute a FAPE in the least restrictive environment, an order permitting District to implement the IEP in its entirety, and a finding that District afforded parents the opportunity to participate in the decision making process regarding the provision of a FAPE to Student. The complaint alleges the dates of meetings, documents and correspondence concerning the IEP at issue and contains a basic description of the activities pertaining to the IEP at issue.

In its NOI, Student contends that District's complaint is insufficient because Student's parents consented to the placement and services offered in the IEP, that the complaint was filed in retaliation against Student for exercising his rights, and the facts alleged in the complaint are intended to prejudice OAH against Student. Student's NOI is, essentially, a motion for summary adjudication. OAH does not summarily resolve factual issues of this nature.

The facts alleged in District's complaint are sufficient to put Student on notice of the issues forming the basis of the complaint. District's complaint identifies the issues and sets forth adequate related facts about the problem to permit Student to respond to the complaint, participate in mediation and prepare for hearing. The IDEA requires only a "description of the nature of the problem," facts related to the problem and proposed resolutions to the extent know and available at the time (20 U.S.C. (b)(7)(A)(ii)), a requirement liberally construed in light of the remedial and informal nature of the due process proceedings. Therefore, District'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: September 10, 2012

/s/

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MARIAN H. TULLY  
Administrative Law Judge  
Office of Administrative Hearings