

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN DIEGO UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2012110169

ORDER (1) DETERMINING THE  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT AND (2) GRANTING  
DISTRICT'S MOTION TO DISMISS  
NCLB CLAIM

On November 5, 2012, Student filed a due process hearing request<sup>1</sup> (complaint) naming the San Diego Unified School District (District).

On November 9, 2012, the San Diego Unified School District (District) filed a motion to dismiss Student's claim under the No Child Left Behind Act of 2001 (NCLB). The motion relies in part on the law regarding the sufficiency of due process complaints, and in part on the law of jurisdiction, such that it will be treated as a joint motion to dismiss and notice of insufficiency (NOI). No opposition has been received.

*Notice of Insufficiency*

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

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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).

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>

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>

Here, Student’s complaint alleges one claim, that “Student was denied Supplemental Education Services under the NCLB.” As a remedy, Student seeks an award of tutoring services to which he is allegedly entitled under the NCLB. It is impossible to determine from Student’s complaint, which references only the NCLB, whether and to what extent Student contends to have been deprived of a FAPE under the provisions of the IDEA. Therefore, Student has failed to state sufficient facts to support his claim, and his complaint is insufficient.

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.

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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> Ed. Code, § 56505.

*Motion to Dismiss*

OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction. Parents have 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 a child with disabilities in need of special education and related services. (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).) OAH has jurisdiction to hear due process claims arising under the IDEA. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029 [hereafter *Wyner*].)

Student’s sole claim is to an award of supplemental education services under the provisions of the NCLB. Pursuant to the authority discussed above, OAH’s jurisdiction extends only to claims brought under the IDEA, and OAH does not have jurisdiction to entertain Student’s claims brought under the NCLB.

ORDER

1. Student’s complaint is insufficiently pled under Title 20 United States Code section 1415(c)(2)(D).
2. District’s motion to dismiss Student’s NCLB claim is granted.
3. All dates in this matter are vacated.
4. 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>
5. 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, or this matter will be closed.

Dated: November 26, 2012

/s/  
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ALEXA J. HOHENSEE  
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.