

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

VALLEJO CITY UNIFIED SCHOOL  
DISTRICT.

OAH Case No. 2016020898

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On February 17, 2016, Student filed a Due Process Hearing Request<sup>1</sup> (complaint) with the Office of Administrative Hearings naming Vallejo City Unified School District. On March 3, 2016, Vallejo City timely filed a Notice of Insufficiency 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. (20 U.S.C. § 1415(b) & (c).) 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 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. (20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).) 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. (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." (Sen. Rep. No. 108-185,

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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 U.S.C. section 1415(b)(7)(A).

*supra*, at p. 34.) 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. (*Alexandra R. ex rel. Burke v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, CIV. 06-CV-0215-JL) 2009 WL 2957991[nonpub. opn.]; *Escambia County Bd. 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, 8:04CV2657T24EAJ) 2005 WL 2850076 [nonpub. opn.]; but cf. *M.S.-G v. Lenape Regional High School Dist. Bd. of Educ.* (3d Cir. 2009) 306 Fed.Appx. 772, 775 [nonpub. opn.].) Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge. (*Assistance to States for the Educ. of Children with Disabilities & Preschool Grants for Children with Disabilities* (Aug. 14, 2006) 71 FR 46,540-46541, 46699.)

## DISCUSSION

Student's complaint raises two issues. The first is that Vallejo City failed to timely assess her after multiple requests were made. The second issue is that Vallejo City failed to provide educational records after Parent requested these records.

In regards to the first claim, Vallejo City argues that the complaint is insufficient because Student alleges that she attends a Head Start Program located at a Vallejo City School, but the program is not operated by Vallejo City. Therefore, it needs additional information as to when Parent made one or more requests for assessment, and to whom the requests were made.

In the complaint, Student alleges that before her third birthday she was receiving services from North Bay Regional Center. Regional centers are responsible for providing services to children with disabilities before they reach the age of three in California. After these children reach three years of age, the school district in which the child resides becomes responsible for providing services to the child, once she has been assessed by the district and found to be eligible for services.

In her complaint Student claims that shortly before her third birthday North Bay sent Vallejo City notification that Student was receiving services from North Bay, and thus might be eligible for special education services from Vallejo City after age three. The complaint lists Student's birth date as May 5, 2011, so Student's third birthday was May 5, 2014. One must assume that since the Regional Center routinely notifies school districts as to which children it serves who will be turning three, so that the districts can have them assessed, it knows the proper place in Vallejo City to send the request. The complaint also alleges that Parent made a request for special education services from Vallejo City when Student "turned three." Student has a sibling who already receives special education services from Vallejo City, and the complaint states that Parent made requests that Student be assessed at the sibling's individualized educational program team meetings. Sibling's name is given in the complaint. Therefore there is information in the complaint that gives notice to Vallejo City

as to when requests for assessment of Student were made, and an inference can be drawn that the requests were made in a manner so that the appropriate person or office in Vallejo City received them. Accordingly, the first issue is sufficiently pled.

Student's second claim concerning student records is insufficiently pled. No dates are given as to when "multiple requests" for records were made, to whom they were made. This does not give Vallejo City sufficient information to participate in a resolution session and prepare for hearing.

### ORDER

1. Issue 1 of Student's complaint is sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).
2. Issue 2 of Student's complaint is insufficiently pled under title 20 United States Code section 1415(c)(2)(D).
3. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).<sup>2</sup>
4. The amended complaint shall comply with the requirements of title 20 U.S.C. section 1415(b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.
5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issue 1 in Student's complaint.

DATE: March 7, 2016

DocuSigned by:



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REBECCA FREIE

Administrative Law Judge

Office of Administrative Hearings

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<sup>2</sup> The filing of an amended complaint will restart the applicable timelines for a due process hearing.