

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Consolidated Matters of:

WINDSOR UNIFIED SCHOOL DISTRICT  
AND INSIGHT SCHOOL OF  
CALIFORNIA-NORTH BAY,

OAH CASE NO. 2010060067

v.

PARENT ON BEHALF OF STUDENT.

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INSIGHT SCHOOL OF CALIFORNIA –  
NORTH BAY & WINDSOR UNIFIED  
SCHOOL DISTRICT.

OAH CASE NO. 2010060742

v.

PARENT ON BEHALF OF STUDENT.

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PARENT ON BEHALF OF STUDENT,

OAH CASE NO. 2010080812

v.

INSIGHT SCHOOL OF CALIFORNIA –  
NORTH BAY & WINDSOR UNIFIED  
SCHOOL DISTRICT.

DETERMINATION OF SUFFICIENCY  
OF AMENDED DUE PROCESS  
COMPLAINT

On September 22, 2010, Parent, on behalf of Student, filed an Amended Due Process Hearing Request<sup>1</sup> (complaint) in these matters.

On October 7, 2010, the Insight School of California – North Bay (Insight) and the Windsor Unified School District (District), filed a Notice of Insufficiency (NOI) as to Student’s Amended Complaint.

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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).

## 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>

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 Improvement Act of 2004 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>

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<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.

<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).

## DISCUSSION

Student's amended complaint alleges three issues, each with multiple subdivisions. Insight and the District ("the agencies") challenge most of the allegations. It is not necessary to describe each of Student's allegations, since the agencies attack most of the allegations based on the same three arguments. None of the arguments is persuasive.

First, the agencies challenge nearly every claim in Student's amended complaint on the ground that Student "fails to allege any disagreement between the parent and the District or Insight regarding a proposal or refusal to initiate or change the identification, assessment, educational placement, or the provision of special education and related services" to Student. However, with respect to most of Student's allegations, the agencies are simply wrong: for example, the allegation that the District failed to have required members of the Individualized Education Program (IEP) team at an IEP meeting is certainly a disagreement regarding a proposal or refusal to change Student's placement. More fundamentally, no allegation of a disagreement is required. Education Code Section 56501, subdivisions (a)(1) and (2), provide that a parent may initiate a due process hearing when there is a "proposal" or "refusal" to initiate or change the student's placement. Several proposals and refusals are alleged in the amended complaint.

Second, the agencies challenge most of Student's allegations on the ground that she has insufficiently pled how the matters of which she complains have damaged her education; i.e., have been prejudicial to her or to Parent and therefore amount to a denial of a free appropriate public education (FAPE). However, the complaint as a whole, adequately alleges the loss of educational opportunity and parental participation. The agencies do not cite any authority requiring the specific pleading of the elements of educational loss or the impeding of parental participation. The details of the alleged damage suffered by Student and Parent are appropriately addressed at hearing.

Third, as to many of Student's allegations, the agencies state that the matter either has or has not been subject to the administrative complaint process of the California Department of Education (CDE). Where the matter has been before CDE, the agencies seem to argue that Student is therefore barred from raising the matter in a due process hearing. On the contrary, it is routine that matters before CDE are later alleged in a due process complaint before the Office of Administrative Hearings (OAH). All that the law requires is that CDE temporarily defer action on those issues until the conclusion of the due process hearing. (34 C.F.R. § 300.152(c)(1)(2006).) Nor is any final determination by CDE binding on OAH, although it is entitled to some weight. (See *People v. Sims* (1982) 32 Cal.3d 468, 479; *Student v. Dry Creek Joint Elementary School Dist.* (2010) Cal.Offc.Admin.Hrngs. Case No. 2009060940, fn. 4.)

As to matters Student has not raised with CDE, the agencies claim that Student has failed to exhaust administrative remedies and cannot be heard by OAH until she has done so. The federal regulation cited above, permitting a due process claim to be heard before the state administrative agency has concluded its investigation, refutes the argument. Moreover,

the only authority the agencies mention is *Hoelt v. Tucson Unified School Dist.* (9<sup>th</sup> Cir. 1992) 967 F.2d 1298. That decision addresses the doctrine of exhaustion of remedies as it applies to a civil complaint in a federal court. It has nothing to do with a complaint before OAH.

The agencies erroneously claim in several instances that Student alleges no facts that connect her grievances with special education law. For example, Student alleges the District failed to respond to her changing medical condition. However, that allegation contains the claim that “the doctor wrote an order for home and hospital on March 3, 2010, which the district ignored.” That allegation relates to a change of placement and is sufficiently specific to allow the District to prepare its response.

Student alleges, for example, that the agencies failed to provide to Parent the information she needed to make informed decisions and give informed consent. She alleges that the District failed to respond to several specified inquiries about the identities of service providers, a case manager, and assessors. Contrary to the claims of the agencies, these allegations are sufficiently detailed to allow them to prepare their defenses.

Student alleges that the agencies failed to assess Student in all areas of disability. Contrary to the claims of the, Student alleges sufficient facts to allow them to prepare their defenses. She alleges that the flaws in their assessments are described in the report of Dr. Carina Grandison of August 31, 2010, and that after parent consented to an assessment on October 7, 2009, the agencies “failed to evaluate the student at all ...”

Both as a whole and in its specific subdivisions, Student’s amended complaint contains sufficient facts relating to the problems it addresses that the agencies can prepare their defenses.

The agencies argue that the resolutions Student proposes are not well defined. However, for the most part Student’s proposed resolutions are as specific as a request for three hours a week of speech and language services at \$100 per hour. The agencies argue that Student should have furnished a legal authority in support of a request for reimbursement, but a complaint is not required to contain legal authority. Read fairly, Student’s requests for the “funding equivalent” of such matters as speech and language services is a request that the District pay for an outside provider. The appropriateness of such relief is a matter to be addressed at hearing.

#### ORDER

1. The complaint is deemed sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).

2. All mediation, prehearing conference, and hearing dates in these matters shall remain on calendar.

Dated: October 18, 2010

/s/

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CHARLES MARSON  
Administrative Law Judge  
Office of Administrative Hearings