

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

GUARDIAN ON BEHALF OF STUDENT,

v.

LOS ANGELES COUNTY OFFICE OF  
EDUCATION.

OAH CASE NO. 2011040785

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On April 21, 2011, Student filed a Due Process Hearing Request<sup>1</sup> (complaint) against the Los Angeles County Office of Education (LACOE). On May 5, 2011, LACOE filed a Notice of Insufficiency (NOI) as to Student's complaint.<sup>2</sup>

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.<sup>3</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>4</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> LACOE concurrently filed a motion to add the Compton Unified School District as a party, which shall be ruled upon in a separate order.

<sup>3</sup> 20 U.S.C. § 1415(b) & (c).

<sup>4</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>5</sup>

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”<sup>6</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>7</sup> Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.<sup>8</sup>

## DISCUSSION

Student’s complaint contains three issues for hearing, alleging that LACOE failed to properly assess Student, develop an appropriate individualized educational program (IEP) to meet his unique needs and failed to produce a complete copy of Student’s educational records. In the first issue, Student sets forth his unique needs and lists various assessments that LACOE should have performed, but did not, and other assessments that LACOE conducted that were not adequate. Regarding the medical, assistive technology and speech and language assessments Student request, the complaint contains sufficient allegations regarding Student’s areas of suspected disability and LACOE’s failure to assess Student in these areas. However, the complaint does not contain sufficient allegations regarding the psychoeducational, occupational therapy and physical therapy assessments conducted on Student because the complaint does not allege when these assessments were conducted. Therefore, Issue 1 contains sufficient factual allegations as to Student’s request for medical, assistive technology and speech and language assessments, and insufficient allegations regarding the psychoeducational, occupational therapy and physical therapy assessments.

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<sup>5</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>6</sup> Sen. Rep. No. 108-185, *supra*, at p. 34.

<sup>7</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>8</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).

In Issue 2, Student alleges that LACOE denied him a FAPE because he failed to meet his IEP goals and LACOE did not develop an IEP that would allow him to make meaningful educational progress. The complaint does not contain sufficient allegations because the complaint does not set forth clearly the IEPs at issue. Accordingly, this issue is insufficiently pled.

Finally, in Issue 3, Student alleges that LACOE denied him a FAPE by failing to produce Student's educational records, which prevented Guardian from meaningfully participating in Student's educational decision making process. The complaint does not contain sufficient allegations that LACOE failed to produce a complete copy of Student's educational records, without indicating what records LACOE failed to produce. While the complaint need not detail every record that LACOE purportedly did not produce, Student needs to generally state which records LACOE failed to produce to permit LACOE to adequately respond to the complaint. Accordingly, this issue is insufficiently pled.

Issue 1 as to Student's request for medical, assistive technology and speech and language assessments is sufficiently pled to put LACOE on notice as to the basis of Student's claims to permit LACOE to respond to the complaint and participate in a resolution session and mediation.

With regard to Issue 1 as to the psychoeducational, occupational therapy and physical therapy assessments and Issues 2 and 3, Student fails to allege sufficient facts supporting these claims to put LACOE on notice, and therefore these claims are insufficient.<sup>9</sup>

## ORDER

1. Issue 1 as to Student's request for medical, assistive technology and speech and language assessments in Student's complaint are sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).

2. Issue 1 as to the psychoeducational, occupational therapy and physical therapy assessments and Issues 2 and 3 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>10</sup>

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<sup>9</sup> Student is advised that an amended complaint needs to focus on the alleged violations and not inflammatory language, which distracts from the clarity of the allegations.

<sup>10</sup> The filing of an amended complaint will restart the applicable timelines for a due process hearing.

4. 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.

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issue 1 as to Student's request for medical, assistive technology and speech and language assessments in Student's complaint.

Dated: May 9, 2011

/s/

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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings