

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN FRANCISCO UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2011071058

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On July 28, 2011, Student filed a filed a Due Process Hearing Request<sup>1</sup> (complaint) naming the San Francisco Unified School District (District).

On August 3, 2011, the District timely filed a Notice of Insufficiency (NOI) 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.<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

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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).

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 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>

## DISCUSSION

Student’s complaint alleges that his mother was informed by the District in May 2011 that the District was not renewing its contract with the non-public school Student was attending. Student alleges that the school in question is an appropriate program for him. He further contends that the District, while informing him that it was no longer contracting with his present school, had failed to offer him a program for the 2011-2012 school year.

In its NOI, the District asserts that Student’s complaint is insufficient because it fails to state Student’s address, his age, date of birth, or his grade level. Although Student’s initial complaint failed to state his residence, age, or date of birth, Student supplemented his complaint the same day he filed it, stating his residence address and date of birth. This information was served on counsel for the District and provides the information which the District contends is missing from Student’s NOI.

The District also contends Student’s complaint is deficient because it fails to reference any individualized education program (IEP) or other document defining Student’s eligibility for special education or the placement and services he is supposed to receive.

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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).

However, the requirement, as the District correctly notes in its NOI, is that the complaint provide a description of the nature of the problem relating to a proposal to initiate or change a student's educational program. There is no specific requirement that an IEP be identified. Here, Student contends that the District had placed him at a non-public school in the past but was now proposing to change his placement because it was no longer planning to contract with the school. Student contends that the school in question is appropriate for him and should not be changed. He also contends that the District has failed to propose an alternative placement for him, leaving him without an educational placement for the 2011-2012 school year.

The facts alleged in Student's complaint are sufficient to put the District on notice of the issues forming the basis of the complaint. Student's complaint identifies the issues and adequate related facts about the problem to permit the District to respond to the complaint and participate in a resolution session and mediation regarding the issues, and to defend against the issues should the matter proceed to hearing.

Therefore, Student's statement complaint is sufficient.

Dated: August 5, 2011

/s/

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DARRELL LEPKOWSKY  
Administrative Law Judge  
Office of Administrative Hearings