

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

FOUNTAIN VALLEY SCHOOL  
DISTRICT.

OAH CASE NO. 2011090037

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On September 1, 2011, Student filed a Due Process Hearing Request<sup>1</sup> (complaint) against the Fountain Valley School District (District). On September 16, 2011, the District 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 Individuals with Disabilities Education Act 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 contains one issue, with three sub-issues, for hearing regarding the District’s alleged failure to offer her an appropriate program to meet her unique needs related to her deafness and communication deficits, and committing procedural errors in the development of its proposed individualized education programs (IEPs).<sup>8</sup> As to Issue 1a, Student alleges sufficient facts that the District, from December 2009 through January 2011, failed to offer Student an appropriate program to meet her unique needs and that the District’s proposed program did not exist. The complaint sets forth Student’s unique needs and how the District’s offer failed to meet those needs, and allegations in support of Student’s contention that the proposed program did not exist. Therefore, Student’s complaint is sufficiently pled.

In Issue 1b, Student alleges various procedural violations by the District from December 2009 through the present. The complaint adequately specifies the alleged procedural violations and how the alleged violation prevented Parents from meaningfully

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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> Student’s second issue for hear alleges various civil rights violations.

participating in Student's educational decision-making process and that Student was denied an educational benefit. Accordingly, Issue 1b is sufficient.

Finally in Issue 1c, Student alleges sufficient facts that the District failed to develop an appropriate IEP from January 2011 through the present. The complaint provides sufficient allegations regarding the District's offers and the several areas in which the District's proposed IEPs failed to provide Student with FAPE and why. Therefore, Issue 1c is sufficient.

Student's proposed resolutions requests continued placement at Oralingual, a certified non-public school, and reimbursement to Parents for specified educational and transportation costs due to the District's purported failure to provide Student with FAPE. A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (20 U.S.C. §1415(b)(7)(A)(ii)(IV).) The proposed resolutions stated in Student's complaint are well-defined, and therefore meet the statutorily required standard of stating a resolution to the extent known and available at the time.

Therefore, Student's complaint is sufficiently pled to put the District on notice as to the basis of Student's claims to permit the District to respond to the complaint and participate in a resolution session and mediation.

#### ORDER

1. The complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: September 20, 2011

/s/  
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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings