

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LONG BEACH UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2011100023

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On September 30, 2011, Parent on behalf of Student (Student), filed a Due Process Hearing Request<sup>1</sup> (complaint) naming Long Beach Unified School District (District) as respondent. On October 13, 2011, District filed a Notice of Insufficiency (NOI) as to Student's complaint. For the reasons set forth below, the complaint is sufficient.

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>

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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).

<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.

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

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 two issues and adequate related facts about eleven problems pertaining to the two issues to permit District to respond to the complaint and participate in a resolution session and mediation.

The complaint states two issues and details 11 problems pertaining to six separate IEPs dated February 23, 2010, May 7, 2010, February 23, 2011, May 31, 2011 and June 17, 2011. The issues and problems are: .

1. Did District fail to offer Student a free appropriate public education (FAPE) in the least restrictive environment (LRE) in the February 23, 2010 and May 7, 2010 IEPs by:

- (1) failing to offer an individualized program in the LRE;
- (2) failing to provide staff that were sufficiently trained, experienced and supervised in autism to implement Student’s IEPs and address his unique needs;
- (3) offering inappropriate and inadequate goals;
- (4) offering inadequate amounts of speech and language therapy;
- (5) failing to address Student’s severe global deficits and maladaptive behaviors with appropriate classroom and home based programs; and

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<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).

- (6) failing to assess Student in all areas of suspected disability in the January 28, 2010 triennial assessment by failing to use appropriate assessment instruments and conduct sufficient observation during the assessment.

2. . Did District fail to offer Student a FAPE in the LRE in the February 23, 2011, May 31, 2011 and June 17, 2011 IEPs by:

- (7) failing to offer an individualized program in the LRE;
- (8) failing to provide staff that were sufficiently trained, experienced and supervised in autism to implement Student's IEPs and address his unique needs;
- (9) offering inadequate and inappropriate goals;
- (10) offering inadequate amounts of speech and language therapy; and
- (11) failing to address Student's severe global deficits and maladaptive behaviors with appropriate classroom and home based programs.

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. Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time. Student's proposed resolutions request a nonpublic school placement with transportation, assistive technology, speech and language therapy and occupational therapy related services for the regular school year and extended school year (ESY). Student also proposes a 15 hour per week home based behavior therapy program to be provided by a non-public agency (NPA), reimbursement to Parents for their payments to an NPA for a home based behavior program and reimbursement to parents for an independent educational evaluation performed by Dr. Chris Davidson.

#### ORDER

Student's complaint is sufficiently pled under Title 20 United States Code section 1415(b)(7)(A)(ii).

Dated: October 25, 2011

/s/

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GLYNDA B.GOMEZ  
Administrative Law Judge  
Office of Administrative Hearings