

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LA MESA-SPRING VALLEY SCHOOL  
DISTRICT.

OAH CASE NO. 2011120397

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On December 13, 2011, Parent on behalf of Student (Student) filed a Due Process Hearing Request<sup>1</sup> (complaint) naming the La Mesa-Spring Valley School District (District) as respondent. The complaint alleges five issues. The issues are (1) failure to assess appropriately; (2) failure to proceed with a necessary mental health assessment; (3) failure to offer an appropriate placement; (4) failure to provide Student with a prior written notice; and (5) failure to adhere to required procedures when Parent requested an Independent Education Evaluation.

On December 28, 2011, the District filed a Notice of Insufficiency (NOI) as to the complaint. The District contends that the complaint fails to allege sufficient facts as to each of the issues so as to enable it to respond to the complaint, resolve the matter or to defend the matter.

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,

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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).

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 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

In his complaint, Student states that he is a seventh grader residing within the District and presently attending the San Diego Center for Children (SDCC), and that he has been eligible for special education since August 2011, under the primary category of Emotional Disturbance and the secondary category of Specific Learning Disability (SLD) under speech and language impairment. Student then states that his treating psychiatrist has diagnosed Student’s main problem as an inability to regulate himself which leads to aggressive acting-out. The psychiatrist feels that Student requires placement in a residential treatment center (RTC). At SDCC, the staff feels Student is a danger to himself and others and must be in an RTC. The complaint also states that the District has refused to offer placement at SDCC or another RTC. Additionally, the District has prevented the San Diego County Department of

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<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).

Mental Health (CMH) to conduct a re-assessment of Student to determine if he should be placed at an RTC.

Student's complaint alleges five issues or claims in the complaint, one of which is sufficient and four which are insufficient. The issues are discussed below.

Issue One is not sufficient because Student fails to allege in what manner the District failed to conduct an appropriate assessment and which assessment is the subject of the claim.

With respect to Issue Two, Student has failed to allege why a re-assessment was required. Thus, Issue Two is not sufficient.

As to Issue Three, the District is on sufficient notice as to what Student is alleging. Student is alleging that because of Student's emotional disturbance, he is unable to attend a public school and requires to be placed at a RTC because of aggressive behavior which endangers others as well as him.

Issues Four and Five are not sufficient because Student fails to allege any facts which are the basis of these issues.

## ORDER

1. Issue Three of Student's complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

2. Issues One, Two, Four and Five of Student's complaint are 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>8</sup>

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.

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<sup>8</sup> The filing of an amended complaint will restart the applicable timelines for a due process hearing.

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issue Three in Student's complaint.

Dated: December 30, 2011

/s/

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ROBERT HELFAND  
Administrative Law Judge  
Office of Administrative Hearings