

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PASADENA UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2012010154

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On January 9, 2012, Student filed a Due Process Hearing Request<sup>1</sup> (complaint) naming the Pasadena Unified School District (District) as respondent. On January 20, 2012, District filed a Notice of Insufficiency (NOI)<sup>2</sup> 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>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

---

<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> District also filed a Motion to Strike Issue Five. District's Motion to Strike will be addressed 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).

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>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

The Student’s complaint alleges five claims, three of which are sufficient to put the District on notice of the issues forming the basis of the complaint, and two are insufficient. In Student’s complaint, Issues number One, Two, and Five identify the issues and related facts about the problem to permit District to respond to the complaint and participate in a resolution session and mediation. Issues number Three and Four are insufficiently pled and fail to provide the District with the required notice of a description of the problem and the facts related to the problem. All issues are discussed below.

Student’s Issue One asserts that District failed its “child find” obligations prior to assessing Student in 2009. The complaint provides sufficient factual basis through factual allegations contending that District knew of Student’s need for special education as early as 2007 and failed to assess Student. Student has identified a problem and provided factual basis sufficient for District to be able to respond to the complaint, and participate in a resolution session and mediation. Accordingly, Issue One is legally sufficient.

---

<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).

Student's Issue Two contends that from January 2009 onwards, District failed to properly assess Student in all areas of suspected disability including, emotional needs, academics, processing problems and speech and language needs. While Student does not provide a specific date of when his Guardian requested a mental health assessment, that is a detail that can be developed at hearing. Student has identified a problem and provided factual basis sufficient for District to be able to respond to the complaint, and participate in a resolution session and mediation. Accordingly, Issue Two is legally sufficient.

Student's Issue Three asserts that because of the failures of the assessments in Issue Two, District failed to develop an individualized education program (IEP) with appropriate measurable goals and offered placement and services that could not provide Student with a FAPE. Student identifies multiple IEP's from 2009 through 2011. However, Student fails to provide any factual basis concerning any IEP after 2009 and therefore, no information is provided to District regarding Student's disagreement with the December 2011 IEP. While Student has identified a problem, the complaint fails to provide a factual basis sufficient for District to be able to respond to the complaint, and participate in a resolution session and mediation. Accordingly, Issue Three is legally insufficient.

Student's Issue Four asserts that District denied Student a FAPE because it predetermined Student's placement and denied Guardian the ability to participate in the development of Student's IEP. While Student has identified a legal issue, Student references a December 2009 IEP. The complaint fails to provide any information regarding a December 2009 IEP team meeting or IEP document. While Student has identified a problem, the complaint fails to provide a factual basis sufficient for District to be able to respond to the complaint, and participate in a resolution session and mediation. Accordingly, Issue Four is legally insufficient.

Student's Issue Five asserts that District's conduct with respect to the factual allegations supporting the other issues in the complaint is a violation of Student and Guardian's rights under Section 504 of the Rehabilitation Act of 1973, Americans with Disabilities Act, and other state and federal civil rights laws.<sup>9</sup> Student has identified a problem and provided factual basis sufficient for District to be able to respond to the complaint, and participate in a resolution session and mediation. Accordingly, Issue Five is legally sufficient.

## ORDER

1. Issues One, Two and Five of Student's complaint are sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).

---

<sup>9</sup> This order solely addresses the issue of sufficiency. District's contention that Issue Five is beyond the jurisdiction of the Office of Administrative Hearings will be addressed in a separate order on District's Motion to Strike.

2. Issues Three and Four 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>10</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.

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues One, Two, and Five in Student's complaint.

Dated: January 25, 2012

/s/

---

**THERESA RAVANDI**  
Administrative Law Judge  
Office of Administrative Hearings

---

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