

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. 2012030057

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On March 1, 2012, Student filed a Due Process Hearing Request<sup>1</sup> (complaint) naming the Pasadena Unified School District (District) as respondent.

On March 16, 2012, 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 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 is three years old and eligible for special education and related services as a pupil with autistic-like behaviors. Student alleges that he was denied a FAPE because District failed to timely assess Student in speech and language, insufficiently assessed Student for sensory and feeding issues, and at the individualized education program (IEP) team meeting on December 5, 2011, District offered placement and services with incomplete information and contrary to the recommendations of Student’s own experts. Student further alleges that almost two months after the December 5, 2011 IEP team meeting, District made Student an offer of speech and language services without an IEP team meeting, thereby depriving Student’s parents (Parents) of meaningful participation in the IEP process. Student’s proposed resolution includes specific hours of an applied behavior analysis (ABA) program, speech services, feeding therapy, occupational therapy (OT) services, compensatory education and reimbursement for expenditures made by Parents to provide Student with the program sought.

In its NOI, District contends that Student fails to state why District’s assessments were not appropriate, how the speech and language assessment was inaccurate, how the

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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).

present levels of performance are inaccurate, how the goals drafted were inappropriate, or when Parents requested an ABA program.

Student's complaint identifies Student's speech, feeding, sensory and socialization difficulties and related facts sufficient for District to respond to the complaint and participate in informal resolution. Student has alleged a delay in completing the speech and language report in sufficient detail for District to determine for itself if deadlines were met or if Parents had an opportunity to participate in the determination of appropriate speech goals and speech services for Student.

Student has provided (i) a description of the nature of the problem, that is, insufficient assessments and recommendations contrary to Parents' experts, (ii) facts relating to the problem; and (iii) a proposed resolution of the problem. Therefore, Student's statement of the claims is sufficient.

#### 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: March 19, 2012

/s/

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ALEXA J. HOHENSEE  
Administrative Law Judge  
Office of Administrative Hearings