

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES COUNTY OFFICE OF
EDUCATION, LOS ANGELES UNIFIED
SCHOOL DISTRICT and GREEN DOT
PUBLIC SCHOOLS.

OAH CASE NO. 2012120753

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On December 21, 2012 Nicole Hodge Amey, Attorney at Law filed with the Office of Administrative Hearings (OAH) a Due Process Hearing Request¹ (complaint) naming the Los Angeles County Office of Education (LACOE), the Los Angeles Unified School District (District) and Green Dot Public Schools (Green Dot).²

On January 7, 2013, Courtney M. Brady, Attorney at Law, timely filed a Notice of Insufficiency (NOI) as to Student's complaint on behalf of LACOE.³

¹ 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).

² While Student indicates that he is bringing his complaint against the District, LACOE, and Green Dot, he only lists the District and Green Dot as parties to be named and according to the attached proof of service, only served the District and Green Dot. OAH originally listed only the District and Green Dot as respondents and therefore did not serve LACOE with the December 24, 2012 scheduling order. Based upon Student's expressed intent to bring this complaint as to LACOE and LACOE's filing of a Notice of Insufficiency, LACOE is treated as a Party to these proceedings. .

³ An NOI must be filed within 15 days after a complaint. (20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).) Because there is no evidence that LACOE was served, or otherwise received the complaint before December 24, 2012, LACOE's NOI is deemed to be timely.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.⁴ 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.⁵ 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.⁶

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁷ The pleading requirements should be liberally construed in light of the broad remedial purposes of the Individuals with Disabilities Education Improvement Act (IDEA) and the relative informality of the due process hearings it authorizes.⁸ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁹

⁴ 20 U.S.C. § 1415(b) & (c).

⁵ 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

⁶ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁷ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁸ *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.].

⁹ 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).

DISCUSSION

Student's complaint alleges seven claims, all of which are insufficiently pled as to LACOE as discussed below. Student alleges he was expelled from the District and Green Dot at the beginning of 2012 but has not requested an expedited hearing. Therefore, OAH does not treat this matter as an expedited case.¹⁰ Student's complaint involves three local education agencies (LEA's). Student's complaint provides a general description of the issues and disputes relating to child find obligations, the failure to assess Student in all suspected areas of disability, and the failure to provide a FAPE to Student. However, the complaint is indiscriminate regarding the allegation(s) made against each LEA. Based on the complaint, it is difficult to discern which factual allegations apply to which LEA, and to which allegation each LEA must present a defense.

Due to the manner in which the current complaint is written, LACOE is required to guess which facts relate to Student's contentions that it denied Student a FAPE. (*Student v. Valley Center Union School District* (February 18, 2009) Cal.Ofc.Admin.Hrgs. Case No. 2009010785.) Accordingly, Student failed to allege sufficient facts as to the issues in the complaint as they pertain to LACOE.

Student's complaint is insufficiently pled in that it fails to include adequate allegations to put LACOE on notice as to the basis of Student's claims and proposed resolutions to permit LACOE to respond to the complaint and participate in a resolution session and mediation.

ORDER

1. Student's complaint is insufficiently pled as to LACOE under section title 20 United States Code 1415(c)(2)(D).
2. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).¹¹
3. 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

¹⁰ Student will be afforded the opportunity to amend his complaint. If he chooses to amend, Student may specify whether or not he is seeking an expedited hearing as to a disciplinary matter.

¹¹ The filing of an amended complaint will restart the applicable timelines for a due process hearing.

4. If Student fails to file a timely amended complaint, the complaint will be dismissed as to LACOE only.¹².

5. All dates previously set in this matter are confirmed as to the other remaining parties.

Dated: January 10, 2013

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings

¹² On January 10, 2013, OAH found the complaint insufficiently pled as to Green Dot, and Student was permitted to file an amended complaint in that matter. Whether Student chooses to file an amended complaint pursuant to that order, or this order, the amended complaint must pertain to all parties Student wishes to include as parties in this matter.