

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, Student 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

Green Dot was on Winter Break from December 21, 2012, through January 6, 2012 and asserts that its offices were closed during this time. Therefore, Green Dot received the complaint when it returned from Winter Break on January 7, 2012. Student has not challenged this assertion. On January 9, 2012, Green Dot filed a Notice of Insufficiency (NOI) as to Student's complaint.

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, to be ruled upon in a separate order, LACOE is treated as a Party to these proceedings.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.³ 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).

The complaint is deemed sufficient unless a party notifies the Office of Administrative Hearings and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements.⁴

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

³ 20 U.S.C. § 1415(b) & (c).

⁴ 20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).

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.

process hearings it authorizes.⁸ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁹

DISCUSSION

Student's complaint alleges seven claims, all of which are insufficiently pled as to Green Dot. Student alleges he was expelled from the District and Green Dot at the beginning of 2012, but does not request an expedited hearing. Therefore, OAH does not treat this matter as an expedited case. Student's complaint involves three local education agencies (LEA's). However, the complaint allegations are unclear as to which factual allegation applies to which LEA. Therefore, Green Dot is required to guess which facts relate to Student's contentions that it denied Student a free appropriate public education. (*Student v. Valley Center Union School District* (February 18, 2009) Cal.Ofc.Admin.Hrngs. Case No. 2009010785.) Accordingly, Student failed to allege sufficient facts as to the issues in the complaint as they pertain to Green Dot.

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

ORDER

1. Student's complaint is insufficiently pled as to Green Dot under 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).¹⁰

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).

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

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.

4. If Student fails to file a timely amended complaint, the complaint will be dismissed as to Green Dot and proceed as to the remaining parties.

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

Dated: January 10, 2013

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings