

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

CAPISTRANO UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2009101576

DETERMINATION OF SUFFICIENCY  
OF DUE PROCESS COMPLAINT

On October 29, 2009, Jillian Bonnington, an advocate on behalf of Parent and Student, filed a Request for Due Process<sup>1</sup> (complaint) naming the Capistrano Unified School District (District).

On November 9, 2009, Kimberly E. Gaither, District's legal specialist, filed a Notice of Insufficiency and Motion to Dismiss (NOI) as to Student's complaint.

APPLICABLE LAW

The party responding to a due process hearing request has the right to challenge the sufficiency of the complaint. (20 U.S.C. § 1415(b) & (c).)<sup>2</sup> The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of 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. (§ 1415(b)(7)(A)(ii)(III) & (IV); Ed. Code, § 56502, subd. (d)(1).)

In addition, fundamental principles of due process apply to administrative proceedings in special education matters. The respondent is entitled to know the nature of

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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> All statutory citations are to Title 20 United States Code unless otherwise noted.

the specific allegations being made against it, such that respondent may be able to prepare a defense. (*Tadano v. Manney* (9th Cir. 1947) 160 F.2d 665, 667; *Hornsby v. Allen* (5th Cir. 1964) 326 F.2d 605, 608.)

## DISCUSSION

Student's complaint alleges nine general areas of problems or claims for the 2007-2008, 2008-2009, and 2009-2010 school years to October 29, 2009, when the complaint was filed. Under the heading of "procedural history," Student states generally that he attended school in the District, "identified" as a pupil eligible for special education under the category of other health impaired (OHI), until September 2009. District's NOI claims that Student has omitted material information because Parent unilaterally placed Student in a private school for the 2007-2008 school year. District has attached documentary exhibits to its motion. However, as set forth above, the sufficiency of Student's complaint must be evaluated on its face. If the complaint is otherwise sufficient, but Student has not set forth accurate information, the District may defend on that basis at hearing.

As discussed below, Student's complaint is insufficient on its face in that it fails to provide the District with the required notice describing his problems and the facts relating to the problems. He provides no facts that set forth what schools he attended, what his unique needs were each year, or what special education placements and services he did or did not receive during the school years at issue, and what special education placement and services he needed to obtain educational benefit.

For example, with respect to Problem 1, for the 2007-2008 school year, Student claims that the District failed to "develop, evaluate, or continue" his individualized education program (IEP), goals or services. Student fails to adequately describe the problem because there is no factual information identifying what IEP was supposed to have been implemented for that school year, in what way it was not implemented, or when it should have been re-evaluated. In addition, there are no facts set forth in support of this problem, such as what school Student attended that year, what his unique needs were, what the District's IEP placement was, and why the placement and services did not meet his unique needs. Moreover, Problem 1 includes unspecified disciplinary and attendance matters that appear to related more to Problem 2, in which Student claims that the District failed to hold an annual IEP meeting for that school year. He fails to set forth facts describing what the District should have known or considered

All of Student's remaining problems suffer the same deficit of information. In addition, the second and fifth problems reference District's failure to conduct a triennial assessment in the fall of 2006, an issue that is beyond the applicable statute of limitations, and without any explanation of its historical relevance to the problems at issue. Student's ninth problem regarding production of pupil records does not contain information to demonstrate that this is an issue within the jurisdiction of OAH.

Student's proposed resolutions request that the District fund, and reimburse Parent for the costs of Student's unspecified private placement, counseling and private services. A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (§1415(b)(7)(A)(ii)(IV).) The proposed resolutions stated in Student's complaint are not well-defined. There is no factual information identifying Student's private placement, how long he has been in that placement, when Parent unilaterally removed Student from the District, what private services he has received and for how long, or why Student needed a more restrictive setting in order to obtain educational benefit.

As discussed above, the District is entitled to know the basis of each claim and the nature of the specific allegations being made against it, with respect to each issue or problem, so that it may be able to prepare a response, prepare for a resolution meeting, or prepare a defense for hearing. For the reasons described above, Student's complaint is insufficient because it does not comply with the requirements of Section 1415(b)(7).

In addition, District's motion to dismiss is based solely on its NOI motion and does not state any separate basis for dismissal. Accordingly, the motion to dismiss is denied at this time because Student is granted the opportunity to amend his complaint.

#### ORDER

1. Pursuant to section 1415(c)(2)(D), Student's complaint is insufficiently pled, and the District's notice of insufficiency is granted.
2. Pursuant to section 1415(c)(2)(E)(i)(II), Student shall be permitted to file an amended complaint.<sup>3</sup>
3. The amended complaint shall comply with the requirements of 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.

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<sup>3</sup> The filing of an amended complaint shall restart the applicable timelines for a due process hearing.

5. All dates previously set in this matter are vacated.

Dated: November 12, 2009

/s/

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DEIDRE L. JOHNSON  
Administrative Law Judge  
Office of Administrative Hearings