

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TWIN RIVERS UNIFIED SCHOOL  
DISTRICTS.

OAH CASE NO. 2011020840

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT; ORDER GRANTING  
MOTION TO DISMISS

On April 12, 2011, Student, through his parent (sometimes referred to as Parent), filed an amended due process complaint. On April 25, 2011, the Twin Rivers Unified School District (District) timely filed a notice of insufficiency (NOI) as to 27 of the 32 issues raised in Student's amended complaint. In the same pleading, the District moved to dismiss all allegations in Student's amended complaint which were beyond the applicable two-year statute of limitations. Student has not filed a response to the District's motion to dismiss.

NOTICE OF INSUFFICIENCY

*APPLICABLE LAW*

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.<sup>1</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>2</sup> These requirements prevent vague and confusing complaints, and promote fairness by providing the

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<sup>1</sup> 20 U.S.C. § 1415(b) & (c).

<sup>2</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>3</sup>

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”<sup>4</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>5</sup> Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.<sup>6</sup>

## *DISCUSSION*

Student’s complaint contains 32 issues. The District agrees that issues 8, 9, 16, 17, and 23 are sufficient but contends that the remaining 27 issues are insufficient. As discussed in detail below, issues 1, 2, 5, 6, 7, 11, 12, part of issue 13, 14, 15, 18, 20, 21, 22, 24, 26, 27, 29, 30, 31, and 32 are insufficient because they are either vague, ambiguous, confusing or fail to state sufficient facts to put the District on notice of the allegations against it.

In issue one, Student contends that the District did not administer adequate or proper assessments to him. However, Student fails to identify which assessments are at issue, when they were administered, or why they were improper.

In issue two, Student states that the District is refusing to provide “students” with any special education or related services. It is unclear if the reference to students is a typographical error. However, assuming that it is, Student fails to identify the special education and related services he requires and fails to state the period of time the District has failed to provide them.

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<sup>3</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>4</sup> Sen. Rep. No. 108-185, *supra*, at p. 34.

<sup>5</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>6</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).

Issue five states that the District has excluded Student's parent from the individualized education program (IEP) process by asking Parent to sign a blank form. Student fails to identify the form or the time period in which these events occurred.

In issue six, Student states that the school psychologist and the speech and language therapist were not present at his November 2011 IEP. However, that date has not yet occurred and it is unclear from the context of the issue which IEP Student meant to reference.

Student alleges in issue seven that the District has denied him a free appropriate public education (FAPE) by discriminating against him based on his race and disability. However, discrimination claims are beyond the jurisdiction of the Office of Administrative Hearings (OAH).

In issue 11, Student states that the District has denied him a FAPE in the 2010-2011 school year because it has changed and stopped services [to Student]. However, Student does not identify what services have been stopped or changed. In issue 12, Student alleges that the District has denied him a FAPE by aggravating his symptoms and making them worse. Student fails to identify what symptoms he is referencing and what the District has done to affect him.

Issue 13 is insufficient to the extent that it alleges that the District has failed to provide Student with services since January 2011 because it fails to describe which services were terminated and why Student required them.

Issue 14 contains several allegations. In the first part of this issue, Student states that a district employee told another school not to accept him for matriculation there. This portion of the issue is insufficient because it fails to detail how this denied Student a FAPE. The issue also states that the District failed to provide Student with "other services" since January 2011 but fails to describe what the services are or why the District is required to provide them to Student, and thus is also insufficient. Issue 14 also alleges that the District denied Student a FAPE when it failed to provide him with speech and psychological services. However, it fails to state any underlying facts that would explain why Student requires these services and why the District was obligated to continue providing them to him.

In issue 15 Student alleges that the District has denied him a FAPE since August 2009 by bullying Student and Parent. Student fails to describe how the District has bullied him or his parent.

In issue 18, Student states that he was denied a FAPE when the District failed to provide him with speech and language services at home. Student fails to identify the school year in question and fails to describe why the District was obligated to provide him with the services in his home.

Issue 20 is insufficient to the extent that it is nearly identical to issue 16 and therefore is redundant.

The first sentence of issue 21 is confusing and ambiguous, and fails to state what Student is attempting to allege with regard to his “HHI” services. Further, “HHI” is not defined, although from the context of Student’s complaint, it appears to refer to home hospital instruction. To the extent that issue 21 alleges that the District ceased providing HHI services to him in January 2011, the issue is insufficient because it fails to describe the factual basis for the District’s obligation to provide the services to Student.

Issues 22 and 24 are insufficient because they fail to describe any action that the District took or failed to take that might have denied Student a FAPE or denied his parent an opportunity to participate in the IEP process.

Issue 26 alleges that Student’s placement during the 2009-2010 school year denied him a FAPE because it was not cognitively, academically, socially, and emotionally the correct placement for him. However, Student fails to explain what it was about the placement that failed to address his needs, why he believes that, and what type of placement he should have had.

In issue 27, Student contends the District denied him a FAPE due to an improper placement and improper assessments during the specified school years. However, Student fails to describe what assessments the District failed to do or why Student required the assessments. He also fails to state why his placements during the school years in question were improper.

Issue 29 is basically a statement stating that Student has not been progressing in school. It does not, however, give any specific information of what Student believes the District failed to do to prevent him from progressing or what Student believes should have been offered to him by way of placement and services to assist his progress. For this reason, issue 29 is insufficient.

Issue 30 again alleges that the District denied Student a FAPE by failing to administer proper assessments to him or to offer him a proper placement and services. However, as in the other insufficient allegations, issue 30 fails to describe which assessments should have been administered to Student and why he needed them, and fails to describe why his placements and services were improper and what should have been offered instead.

In issue 31 and 32, Student states that his problems with school are affecting his parent and that she is spending all her time dealing with Student’s issues. However, Student fails to state how his parent’s issues have resulted in a denial to him of a FAPE or how the District has prevented his parent from participating in the IEP process. Issues 31 and 32 are therefore insufficient as pled.

Student's remaining issues are sufficiently pled to put the District on notice of the basis of Student's claims. In issue three, Student alleges the District committed a procedural violation by preparing an IEP in June 2009 without the involvement of his parent. In issue four, Student alleges the District excluded his parent from the IEP process by failing to have an interpreter present at IEP meetings and failed to provide his parent with procedural safeguards prior to June 2009. In issue 10, Student states he was denied a FAPE during the 2010-2011 school year because the District permitted his teachers to be absent or kept changing them, thereby denying him consistency. In the first part of issue 13, Student contends that the District committed a procedural violation by excluding his parent from the IEP process when the District failed to hold an IEP meeting when Parent requested one. Student alleges another procedural violation in issue 19 where he contends that his parent was excluded from the IEP process when the District shut off her tape recorder during an IEP meeting in August 2010. Issue 25 is sufficient to the extent that it alleges that the assessment conducted by Mr. Brock is invalid because Student was crying the entire time the assessment was administered. Finally, issue 28 is sufficient because it describes in sufficient detail why Student believes the District prevented his parent from meaningfully participating in the IEP process.

The District also challenges Student's resolutions.

A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (20 U.S.C. §1415(b)(7)(A)(ii)(IV).) The proposed resolutions stated in Student's complaint are not well-defined. However, Student has met the statutorily required standard of stating resolution to the extent known and available to him at the time.

#### MOTION TO DISMISS

The District moves to dismiss all allegations raised by Student which allege issues arising more than two years prior to the filing of his complaint. A request for a due process hearing "shall be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request." (Ed. Code, § 56505, subd. (1).) This time limitation does not apply to a parent if the parent was prevented from requesting the due process hearing due to either: 1) specific misrepresentations by the local educational agency that it had solved the problem forming the basis of the due process hearing request; or 2) the withholding of information by the local educational agency from the parent that was required to be provided to the parent under special education law. (*Ibid.*; 20 U.S.C. § 1415(f)(3)(D).)

The District contends that neither of these exceptions applies to Student's complaint. Student's complaint repeats in several places his allegation that his parent was not provided with a copy of procedural safeguards until June 2009. (See, e.g. issues 1 and 4). Assuming this to be true, Student fails to give any explanation as to why his parent was prevented from filing a due process complaint as to allegations in prior years once she had received a copy of the procedural safeguards. Student's complaint fails to reference any other reason why either

of the exceptions to the statute of limitations would apply to his case. The District's motion to dismiss those allegations in Student's complaint referencing incidents prior to April 12, 2009, is granted without prejudice.

#### MEDIATOR ASSISTANCE FOR NON-REPRESENTED PARENTS

A parent who is not represented by an attorney may request that the Office of Administrative Hearings (OAH) provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint.<sup>7</sup> Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

A review of the record in this case reveals that Student's parent previously contacted OAH for assistance and that OAH referred a mediator to her. However, it is unclear from the record whether Parent ever received any assistance in developing her due process complaint. Should Parent wish such assistance again, she should contact OAH in writing or telephone the office in Sacramento at (916) 263-0880.

#### ORDER

1. Issues 3, 4, 8, 9, 10, part of 13, 16, 17, 19, 25, and 28 of Student's complaint are sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

2. Issues 1, 2, 5, 6, 7, 11, 12, part of issue 13, 14, 15, 18, 20, 21, 22, 24, 26, 27, 29, 30, 31, and 32 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>8</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 wishes the assistance of a mediator from OAH, his parent should either write to OAH or call the office at the number indicated above.

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<sup>7</sup> Ed. Code, § 56505.

<sup>8</sup> The filing of an amended complaint will restart the applicable timelines for a due process hearing.

6. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues 3, 4, 8, 9, 10, the part of issue 13 found sufficient above, 16, 17, 19, 25, and 28 of Student's complaint.

7. All allegations in Student's complaint raising issues that occurred prior to April 12, 2009, including issues in those paragraphs of Student's complaint which have been found to be sufficient, are dismissed without prejudice.

Dated: April 28, 2011

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DARRELL LEPKOWSKY  
Administrative Law Judge  
Office of Administrative Hearings