

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

HEMET UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2011040698

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On April 19, 2011, Vivian E. Billups, attorney for Student (Student), filed a Due Process Hearing Request<sup>1</sup> (complaint) naming the Hemet Unified School District (District).

On April 26, 2011, Peter A. Sansom, attorney for 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 Individuals with Disabilities Education Act 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

The facts alleged in Student’s complaint are sufficient to put the District on notice of the issues forming the basis of the complaint. Student’s complaint identifies the issues and adequate related facts about the problem to permit District to respond to the complaint and participate in a resolution session and mediation.

Student’s complaint alleges a single claim, that District denied Student a FAPE during the 2010-2011 school year. Student explains that the basis for this claim is that District did not fully assess Student and subsequently failed to offer Student an individualized education program (IEP) that was reasonably calculated to confer an educational benefit on Student. Student further alleges that District failed to implement the IEP that it did develop. Student also claims that the IEP and any addendum IEPs for the 2010-2011 school year “contain procedural and substantive violations,” but he fails to identify the specific procedural and substantive errors committed by District.

In this instance, Student has only been with District since the fall of 2010. Accordingly, Student’s claims accrued over a period of only a few months preceding the filing of the claim. Therefore, although Student’s complaint is lacking in some specific

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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 (Escambia)* (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).

details, it is not so devoid of facts as to provide District with inadequate notice of its claims so that District cannot participate in a resolution session or mediation. If this matter proceeds to a due process hearing, the issues will be fully discussed at the prehearing conference. Further, nothing prevents Student from filing an amended complaint once he has received his records from District.

Student alleges that any failure to more fully state his claims in the complaint is due to District's refusal to provide him with his educational records, although they were requested before the complaint was filed. As in the present case, the student in *Escambia* claimed that school district failed to provide him with requested educational records upon request which resulted in his truncated complaint. The court explained in *Escambia, supra*, 406 F. Supp.2d 1248, at 1259-1260, that "the statute does not specify that *all* facts relating to the parents' dissatisfaction must be spelled out in the notice, much less that every legal theory must be set forth in painstaking detail at the time to avoid waiver." (Original italics.) Although abbreviated, Student's statement of his single claim 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: April 28, 2011

/s/

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MICHAEL G. BARTH  
Administrative Law Judge  
Office of Administrative Hearings