

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CENTER UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2011120597

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On December 19, 2011, Student filed an expedited Due Process Hearing Request<sup>1</sup> (complaint) naming the Center Unified School District (District) with the Office of Administrative Hearings (OAH). On January 11, 2012, the District filed a Notice of Insufficiency (NOI) as to Student's complaint. On January 12, 2012, OAH denied the District's NOI because an NOI is not permitted with respect to expedited hearing requests.<sup>2</sup>

On January 23, 2012, OAH issued a Prehearing Conference (PHC) order that bifurcated the nonexpedited issues for hearing, formerly Student's Problem #3, and provided that effective January 23, 2012, all statutory timelines start over on Student's nonexpedited complaint issues, deemed to be separately filed as of this date. The PHC order provided that Issues 1 – 3 were the expedited issues for hearing and Issues 4 and 5 were the nonexpedited issues for hearing.<sup>3</sup> On February 3, 2012, the District filed an NOI as to Issues 4 and 5.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.<sup>4</sup> The party filing the complaint is not entitled to a hearing

---

<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> In the Order of January 12, 2012, OAH ordered the dismissal of all Student's allegations that involved discrimination and negligence under state civil tort law. As a consequence, Student's original Problem #4 was dismissed in its entirety.

<sup>3</sup> For the expedited hearing, Student and the District were in hearing on January 31 through February 2, 2012, and scheduled for an additional hearing day on February 9, 2012.

<sup>4</sup> 20 U.S.C. § 1415(b) & (c).

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

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”<sup>7</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>8</sup> Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.<sup>9</sup>

## DISCUSSION

Student’s complaint contains five issues for hearing, as defined in the January 23, 2012 Order, with Issues 4 and 5 being subject to the District NOI as nonexpedited issues for hearing. These issues involve the District’s alleged failure to provide services to implement Student’s individualized education program (IEP) before and after the October 11, 2011 disciplinary incident.

---

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

<sup>6</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>7</sup> Sen. Rep. No. 108-185, *supra*, at p. 34.

<sup>8</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>9</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).

As to Issues 4 and 5, Student alleges insufficient facts that the District failed to implement Student's IEP. The complaint's description of facts is not clear as to IEP at issue and the services that the District did not provide as stated in Student's IEP. If Student submits an amended complaint, the amended complaint should not focus on conversations between Parent and District personnel that are extraneous to Student's contentions that the District denied her a FAPE. Instead, the amended complaint should simply state the IEP that the District needed to implement, and which portions of the IEP that the District failed to provide Student. Therefore, Issues 4 and 5 are insufficiently pled.

Student's complaint does not contain clear proposed resolutions as to what Student requests if OAH determines that the District denied her a FAPE. 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).) Student's complaint does not contain a well-defined proposed resolution, and therefore does not meet the statutorily required standard of stating a resolution to the extent known and available at the time.

With regard to Issues 4 and 5, Student fails to allege sufficient facts supporting these claims to put the District on notice, and therefore these claims are insufficient.

Pursuant to Education Code section 56505, subdivision (e)(6), a parent who is not represented by an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. If Parent requests the assistance of a mediator, she should contact OAH immediately in writing.

## ORDER

1. Issues 4 and 5 in Student's complaint are insufficiently pled 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).<sup>10</sup>

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, Issues 4 and 5 in the complaint will be dismissed, and the matter proceed solely as to Student's expedited hearing request.

---

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

5. All dates previously set in this matter as to Student's nonexpedited hearing are vacated. The February 9, 2012, hearing date as to the expedited hearing request shall proceed as scheduled.

Dated: February 7, 2012

/s/

---

PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings