

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

FALLBROOK UNION HIGH SCHOOL  
DISTRICT.

OAH CASE NO. 2010020021

DETERMINATION OF SUFFICIENCY  
OF DUE PROCESS COMPLAINT

On February 1, 2010 attorney Meagan Nunez, on behalf of Student, filed a Due Process Hearing Request (complaint) against the Fallbrook Union High School District (District).<sup>1</sup> On February 16, 2010, attorney Sharon A. Watt, on behalf of the 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 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 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>

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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).

<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.

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

Student’s complaint alleges two claims against the District, which are both insufficiently pled. Student’s claims involve the District’s purported failure to implement Student’s behavior support plan (BSP) and his individualized education program (IEP) and that Student does not require a one-to-one paraprofessional. Student also alleges that the District failed to conduct a speech and language assessment and to provide Student with IEP goals in mathematics.

Student’s complaint is insufficiently pled in that it fails to provide the District with the required notice of a description of the problem and the facts relating to the problem. The complaint does not allege the dates at issue regarding the BSP and IEP, and when the District purportedly failed to conduct the required speech and language assessment. Therefore, Student has failed to state sufficient facts supporting his two claims in the complaint, according the complaint is insufficiently pled.

## ORDER

1. Student’s complaint is insufficiently pled under section 1415(c)(2)(D).
2. Student shall be permitted to file an amended complaint under section 1415(c)(2)(E)(i)(II). If Parent files the complaint on behalf of Student, Parent shall include proof that she has been either been appointed Student’s conservator with power over his

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<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* (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).

educational decisions, or that Student has transferred his educational rights to Parent, or that Student authorizes Parent to represent his interests in this matter.<sup>8</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.

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

Dated: February 24, 2010

/s/

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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>8</sup> The filing of an amended complaint will restart the applicable timelines for a due process hearing. Student turned 18 years of age on February 12, 2010. Parent will need to include with the amended complaint proof that either she has been appointed Student's conservator with power over his educational decisions, or Student has transferred his education rights to Parent, or that Student otherwise authorizes Parent to file this due process matter and represent his interests therein. Without any of these, Parent does not have the authority to file an amended complaint on behalf of Student. (Ed. Code § 56041.5.)