

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LIBERTY UNION HIGH SCHOOL  
DISTRICT.

OAH CASE NO. 2011031491

ORDER GRANTING REQUEST FOR  
RECONSIDERATION, AND  
DETERMINATION OF SUFFICIENCY  
OF DUE PROCESS COMPLAINT

On May 17, 2011, the undersigned administrative law judge (ALJ) issued an order finding that Student's complaint was "deemed sufficient" under Title 20 United States Code section 1415(c)(2)(C) and Education Code section 56502, subdivision (d)(1), because District's Notice of Insufficiency (NOI) was untimely, in that it was not filed within the statutorily required timeline.

On May 19, 2011, John Saylor, District's Director for Special Services filed a request for reconsideration on behalf of District.

APPLICABLE LAW

The Office of Administrative Hearings will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

DISCUSSION AND ORDER REGARDING REQUEST FOR RECONSIDERATION

In the May 17, 2011 order deeming Student's complaint sufficient, the ALJ found as follows:

Student's complaint was originally filed by an attorney on March 28, 2011. The proof of service included with the complaint indicates that the complaint was served on the District on March 28, 2011. On April 4, 2011, the attorney sent a letter to OAH asking that the complaint be dismissed without prejudice. On April 21, 2011, before OAH had finalized the closing of the file, Student's

parent advised OAH in writing that she had never authorized the attorney to withdraw the complaint[.] Therefore, OAH reopened the file on May 3, 2011, [but reset the timelines to reflect the new opening date for the case].<sup>1</sup> **The 45-day timeline for issuance of the decision in the case was reset by OAH in order to allow parties a chance to hold a resolution session meeting.** However, this action by OAH did not reset the 15-day timeline for filing a NOI pursuant to Title 20 United States Code section 1415(c)(2)(C), and Education Code section 56502, subdivision (d)(1).

The ALJ found that, because the order reopening the case only “reset the 45-day timeline for issuance of the decision in the case,” all other applicable timelines, including those for holding a resolution session and for filing a NOI, among others, were not reset. Therefore, the ALJ found Student’s complaint’s sufficient, while finding District’s NOI untimely because it was filed more than 15 days after the March 28, 2011 filing date of Student’s complaint.

Based on equitable grounds, District requested that the determination of sufficiency be reconsidered. In support of its request, District argues and offered evidence to show that it had believed that Student’s complaint was being dismissed based on the April 4, 2011 request by Student’s attorney. District explains the dismissal request was made barely seven days after the March 28, 2011 filing of the complaint, and that it would have timely filed a NOI, but for the request and its reliance on it. Thus District alleges prejudice based on its detrimental reliance on Student’s former attorney dismissal request.

Further, District argues that it had acted in good faith and with due diligence, in that it timely and promptly filed its NOI, on May 13, 2010, once it learned that Student’s case was not dismissed and/or has been reopened on May 3, 2011.<sup>2</sup>

Based on the foregoing fact, the ALJ agrees that the determination of sufficiency of due process complaint determination issued on May 17, 2011 should be reconsidered. Accordingly, District’s request for reconsideration is granted.

#### THE APPLICABLE LAW REGARDING THE DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.<sup>3</sup> The party filing the complaint is not entitled to a hearing

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<sup>1</sup> The text in bracket was in error and, as explained below, should not have been included in the order.

<sup>2</sup> See “Order Granting Request for Reconsideration” above.

<sup>3</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>4</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>5</sup>

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”<sup>6</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>7</sup> Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.<sup>8</sup>

## DISCUSSION

Student’s complaint was originally filed by an attorney on March 28, 2011. On April 4, 2011, Student’s attorney sent a letter to OAH asking that the complaint be dismissed without prejudice. On April 21, 2011, parent advised OAH that the complaint should not be dismissed, and OAH reopened the complaint on May 3, 2011. District filed its NOI on May 13, 2011, within 10 days after the case was reopened. Therefore, District’s NOI is timely based on the reopen date of May 3, 2011.

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<sup>4</sup> 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

<sup>5</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>6</sup> Sen. Rep. No. 108-185, *supra*, at p. 34.

<sup>7</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>8</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).

Student alleges seven claims (issues) in the complaint, and as discussed below, none are sufficient.

Regarding Issue Number 1, Student alleges that District denied him a FAPE because District failed to offer him a placement in a program that was designed to meet his unique needs;

In Issue Number 2, Student alleges that District denied him a FAPE because District failed to offer him an appropriate placement in the least restrictive environment;

In Issue Number 3, Student alleges that District denied him a FAPE because District failed to complete a formal manifestation determination and/or functional analysis assessment when his educational placement was altered for more than ten (10) days;

In Issue Number 4, Student alleges that District denied him a FAPE, because District failed to provide him with an adequate behavioral intervention plan;

Regarding Issue Number 5, Student alleges that District denied him a FAPE, because District failed to adequately assess him in all areas of suspected disability;

Regarding Issue Number 6, Student alleges that District denied him a FAPE, because District failed to provide parent with a full and complete copy of his educational records; and

Regarding Issue Number 7, Student alleges that District denied him a FAPE, because District failed to provide parent with prior written notice regarding his suspensions and expulsions.

Because none of the issue is sufficiently pled, the seven issues are considered together below. While Student provided very detailed “summary of facts” regarding his education history, from kindergarten year through the 12th grade, and alleges many violations by various educational agencies and districts, Student was placed in a “court school” for most of Student’s 10th through 12 grades school years. The court school is run by another educational agency rather than the District named in this complaint.

Further, regarding the time Student was at District, Student’s complaint offered the following account:

In April of 2010, [Student], still in 11th grade, was returned to Tobin World [District] from Mt. McKinley Court School. Within a month, the IEP Team held a meeting to consider [Student]’s situation. Again, it was pointed out that [Student]’s emotional disturbance adversely affected his educational performance requiring special education and related services. He was placed back in the non-public setting, with speech and counseling once a week along with medication and case management.

Clearly stated goals were prepared and [Student] began to show improvement. (Emphasis added).

Even though Student has made general allegation of denials of FAPE, Student has not make any specific allegation against District, and has failed to provide any specific fact regarding any act or omission by District, relating to the “proposed initiation or change concerning the identification, evaluation, or educational placement, or the provision of a FAPE” to him. Further, Student’s complaint fails to make an allegation against District, in such a form that District could have “an awareness and understanding of the issues forming the basis of the complaint,” and for it to prepare for the hearing and to participate in resolution sessions and mediation.

Therefore, all seven issues in Student’s complaint are found to be insufficiently pled because Student has not identified how District has denied him a FAPE.

Regarding proposed resolutions, Student seeks: a) a non-public school placement at District’s expense; b) an independent educational evaluation at District’s expense; c) one-to-one academic instruction; d) transition services; and e) educational records, among others. Ordinarily, the proposed resolutions can be said to have met the statutorily required standard of stating a resolution to the extent known and available, and thus considered adequately stated. However, because all of the issues are found to be insufficiently pled, the proposed resolutions are also found to be deficient, in that they could not be considered relevant reliefs for such wrongs, which District is not aware of at the present time.

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 in identifying the issues, Parent should contact OAH immediately in writing.

## ORDER

1. Student’s complaint is found to be insufficiently pled under title 20 United States Code section 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>9</sup>

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<sup>9</sup> The filing of an amended complaint will restart the applicable timelines for a due process hearing.

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, OAH may dismiss Student's complaint.<sup>10</sup>

IT IS SO ORDERED.

Dated: May 23, 2011

/s/

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ADENIYI AYOADE  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>10</sup> District also requests a dismissal of Student's complaint because the complaint "fails to identify any issues relating to the provision of special education and related services by the District," and because "none of the allegations in [Student]'s complaint occurred during a time when Student was enrolled in the District." This request is addressed through this "Determination of Sufficiency of Due Process Complaint" order, and OAH will not issue a separate ruling on the motion to dismiss.