

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

v.

MANTECA UNIFIED SCHOOL DISTRICT,  
SAN JOAQUIN COUNTY OFFICE OF  
EDUCATION, AND SAN JOAQUIN  
SELPA.

OAH CASE NOS. 2011050574 and  
2011060184

MANTECA UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2011050289

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

PROCEDURAL BACKGROUND

The Manteca Unified School District (District) filed a request for due process hearing in case number 2011050289 (District's complaint) on May 4, 2011, which raised the single issue of whether the District may assess Student in the area of social/emotional in accordance with a December 2010 assessment plan. On May 12, 2011, Student filed a request for mediation and due process hearing in case number 2011050574 (Student's first complaint), which also related to the issue of assessments in the December 2010 assessment plan. OAH consolidated the two cases on May 17, 2011 resulting in the first consolidated matter. On May 24, 2011, Student filed a second request for mediation and due process hearing in case number 2011060184 (Student's second complaint). Student's second case also involved issues relating to the December 2010 assessments. On May 30, 2011, Student fled a motion to amend, add parties and withdraw claims. On June 4, 2011, Student filed a further motion to amend. On June 8, 2011, the Office of Administrative Hearings (OAH) denied Student's May 30 and June 4, 2011 motions without prejudice.

On June 15, 2011, Student filed three motions under OAH case number 2011060184: 1) motion to add additional parties to Student's complaint in the first consolidated matter; 2) motion to amend Student's complaint in the first consolidated matter; and 3) motion to

consolidate the first consolidated matter with Student's complaint identified as OAH case number 2011060184. Student included a proposed amended and consolidated complaint.

District filed an opposition to Student's request to add a party on June 17, 2011 under the caption of the first consolidated action. Also on June 17, 2011, proposed new parties San Joaquin County Office of Education (SJCOE) and San Joaquin Special Education Local Plan Area (SELPA) filed under OAH case number 2011060184 an opposition to their addition as parties. On June 20, 2011, OAH partially granted Student's motion to amend and add parties, in which OAH granted Student's motion to add SJCOE and the SELPA as parties to these consolidated cases.

On June 23, 2011, Student filed a motion for clarification of OAH's June 20, 2011 order. OAH granted Student's motion on June 27, clarifying that Student's motion to amend and add parties pertained to Student's second complaint in case number 2011060184. Therefore, Student's proposed complaint was deemed to add SJCOE and SELPA to Student's second complaint, a proposed copy of which was filed with OAH on June 15, 2011, and served on all parties on that date.

On June 28, 2011, SJCOE and SELPA jointly filed a notice of insufficiency as to Student's amended complaint. Student filed an opposition on July 1, 2011.

#### 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).

The complaint is deemed sufficient unless a party notifies the Office of Administrative Hearings and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements.<sup>2</sup>

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

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

<sup>2</sup> 20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).

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>

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 IDEA 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

### *Timeless of Notice of Insufficiency*

Student contends that the notice of insufficiency (NOI) filed by SJCOE and SELPA is not timely. Student points out that he served SJCOE and SELPA with copies of both of his complaints on May 30, 2011. Student believes that since SJCOE and SELPA received copies of his initial complaints on May 30, the 15-day time period for filing an NOI began to accrue on that date. Therefore, Student believes that any NOI should have been filed no later than approximately June 14, 2011.

Student’s argument is unpersuasive for two reasons. First, the NOI filed by SJCOE and SELPA pertains to Student’s amended complaint, not to his two initial complaints. Student’s proposed amended complaint was not filed with OAH or served on the responding

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<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.

<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).

parties until June 15, 2011. Therefore, the parties had, at a minimum, 15 days from June 15, 2011, to file an NOI. SJCOE's and SELPA's NOI was filed on June 28, and therefore is timely based on a filing and service date of June 15, 2011.

Additionally, Student chose to move to amend his initial complaints to include SJCOE and SELPA rather than filing a separate, new complaint against them. Therefore, until OAH granted Student's motion to amend/add parties, there was no operative complaint to which SJCOE and SELPA were parties. OAH granted Student's motion to amend/add parties on June 20, 2011, in an order which specifically stated that Student's amended complaint, with the newly added parties, was deemed filed as of that date, with all timelines to begin as of June 20. Since Student was not given leave to add SJCOE and SELPA as parties until June 20, SJCOE and SELPA were not parties before that date. Therefore, they had 15 days from June 20 to file their NOI. Since SJCOE and SELPA filed their NOI on June 28, 2011, it is timely.

### *Sufficiency of Allegations*

SJCOE and SELPA contend that Student's amended complaint is insufficient because it fails to specify the allegations against them and to specify the timeframe during which they allegedly violated Student's rights. However, it is clear from Student's complaint that he contends that all named respondents failed to obtain proper consent from his parent when Student was assessed in December 2010 pursuant to an assessment plan, failed to delineate the testing that was going to be done, failed to inform Parent of what alternative assessments would be conducted, improperly conducted assessments to obtain Student's intelligence quotient, failed to fully inform Parent of the scope of the assessments, and infringed upon Parent's right to participate in the development of Student's individualized education program. All allegations in Student's complaint stem from the assessments performed in or around December 2010, and from an IEP meeting which allegedly occurred on January 15, 2011. Student's amended complaint specifically states the allegations and the time period involved in each allegation. Whether SJCOE and SELPA are proper or appropriate parties to this action is irrelevant to whether the complaint itself states enough facts to survive an NOI. Given the detailed allegations in Student's amended complaint, SJCOE's and SELPA's contentions that there is insufficient information to permit them to defend against the allegations are not persuasive.

The facts alleged in Student's complaint are sufficient to put SELPA and SJCOE 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 all parties to respond to the complaint and participate in a resolution session and mediation.

Therefore, Student's amended complaint 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: July 5, 2011

/s/

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DARRELL LEPKOWSKY  
Administrative Law Judge  
Office of Administrative Hearings