

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MONTEREY PENINSULA UNIFIED  
SCHOOL DISTRICT.

OAH CASE NO. 2011050598

ORDER OF DETERMINATION OF  
SUFFICIENCY OF AMENDED DUE  
PROCESS HEARING REQUEST

On May 16, 2011, Student's parent on behalf of Student (Student) filed a due process hearing request<sup>1</sup> (complaint) naming the Monterey Peninsula Unified School District (District).<sup>2</sup> On May 20, 2011, the Office of Administrative Hearings (OAH) issued an order finding that the complaint was not sufficiently pled and giving Student leave to amend. Student filed an amended due process hearing request (amended complaint) on June 1, 2011.

On June 3, 2011, the District filed a notice of insufficiency (NOI) as to Student's amended complaint.

APPLICABLE LAW

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 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

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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> Student's due process request contained a request for stay put and a motion to consolidate. Those matters will be addressed in separate orders. The District's motion to dismiss will also be addressed separately.

<sup>3</sup> 20 U.S.C. § 1415(b) & (c).

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 amended complaint contains four issues for hearing. The District’s NOI challenges portions of the first and third issues as being insufficient. Student’s first issue alleges that the District committed procedural violations of the Individuals with Disabilities Education Act (IDEA) by failing to respond to Student’s March 6, 2011 written request for an independent educational evaluation (IEE) in an appropriate and timely manner.

Student alleged this same issue in Student’s initial due process request. OAH ruled that the issue was not sufficiently pled because it failed to specify which District assessment was the basis for Student’s request for an IEE and why Student contended that Student was denied a free appropriate public education (FAPE) based on the District’s failure to appropriately respond to the request for an IEE.

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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).

In its most recent NOI, the District contends that Student has made precisely the same allegations in the first issue in the amended complaint as Student did in the initial complaint. While that is technically true, the factual allegations of the amended complaint now contain information regarding the assessment upon which the request for an IEE is based. The factual allegations also allege that Student was denied a FAPE because the requested IEE was delayed based on the District's actions. Those allegations are sufficient to put the District on notice as to the nature of Student's claims.

Student's third issue for hearing involves the District's alleged failure to have all necessary staff members at the February 16, 2011 individualized educational program (IEP) team meeting. Student alleges that the District's failure to have a speech-language pathologist at the IEP meeting or to obtain a waiver of the attendance of the speech-language pathologist denied Student a FAPE.

The District objects to subpart 3B of the third issue regarding the lack of a waiver. The District contends that the language of subpart 3B is duplicative of subpart 3A which alleges the failure of the speech-language pathologist to attend the meeting. Once again, the District's arguments may be technically true, but a review of the entirety of third issue demonstrates that both subparts are intended to be portions of the same issue. Subpart 3B provides a clarification of subpart 3A. The allegations of the third issue are sufficient to put the District on notice as to the nature of Student's claims.

#### 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: June 7, 2011

/s/

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SUSAN RUFF  
Administrative Law Judge  
Office of Administrative Hearings