

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

OAH CASE NO. 2011050660

v.

ROCKLIN UNIFIED SCHOOL DISTRICT,

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ROCKLIN UNIFIED SCHOOL DISTRICT,

OAH CASE NO. 2011030240

v.

PARENT ON BEHALF OF STUDENT.

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT, CASE NO. 2011050660

On May 16, 2010, Student filed a Due Process Hearing Request<sup>1</sup> (complaint) against the Rocklin Unified School District (District) OAH Case Number 2011050660. On May 20, 2011, 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 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

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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).

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 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 contains six issues for hearing, alleging that the District denied him a FAPE by not meeting his unique behavioral needs, and failing to timely share information. In the first issue, Student alleges that the District denied him a FAPE by failing to assess him after Parent’s request. The complaint does not contain sufficient information as Student does not allege when Parent made the assessment request to the District. Accordingly, this issue is insufficiently pled.

In Issue Two, Student asserts that the District failed to adequately meet his unique needs by not proposing a functional analysis assessment (FAA) and behavior intervention plan (BIP) when the District became aware that Student’s behavior support plan was not working. The complaint contains sufficient allegations because Student alleges when the

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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).

District was put on notice that it was not meeting Student's unique behavioral needs and needed to conduct an FAA and develop a BIP. Accordingly, this issue is sufficiently pled.

For Issue Three, Student contends that the District denied him a FAPE by not considering providing him an aide. The complaint does not contain sufficient allegations because Student does not allege why he requires an aide and when Parent requested the aide. Accordingly, this issue is insufficiently pled.

In Issue Four, Student alleges that the District denied him a FAPE by failing to timely and adequately communicate with Parent. The complaint does not contain sufficient allegations because Student does not allege what information that District failed to communicate with Parent and why Parent needed this information to meaningfully participate in Student's educational decision-making process. Accordingly, this issue is insufficiently pled.

Student asserts in Issue Five that the District denied him a FAPE by not switching his psychologist. The complaint does not contain sufficient allegations because the contention that the psychologist had no rapport with Student does not automatically mean that Student is not making meaningful educational progress or the District is not meeting Student's unique needs. Accordingly, this issue is insufficiently pled.

Finally, in Issue Six, the complaint alleges that the District denied Student a FAPE by having him remain in the school conference room during lunch when he had behavioral problems. The complaint contains sufficient allegations that the District having Student remain in the conference did not meet his unique behavioral needs and that the District needed to implement other behavioral strategies. Accordingly, this issue is sufficiently pled.

Student's proposed resolutions request an independent expert to assess Student and to develop a BIP and private summer school and private tutoring. Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time the complaint was filed.

Issues 2 and 6 are sufficiently pled to put the District on notice as to the basis of Student's claims to permit the District to respond to the complaint and participate in a resolution session and mediation.

With regard to Issues 1, 3, 4 and 5, Student fails to allege sufficient facts supporting this claim to put the District on notice, and therefore this claim is insufficient.

## ORDER

1. Issues 2 and 6 of Student's complaint are sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).

2. Issues 1, 3, 4 and 5 of Student's complaint is insufficiently pled under title 20 United States Code section 1415(c)(2)(D).

3. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).<sup>8</sup>

4. 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.

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues 2 and 6 in Student's complaint.

Dated: May 25, 2011

/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.