

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

CUPERTINO UNION SCHOOL  
DISTRICT.

OAH CASE NO. 2011070771

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On July 21, 2011, Parents, on behalf of Student, filed a Due Process Hearing Request<sup>1</sup> (complaint) naming Cupertino Union School District (District). On August 1, 2011, Jeffery W. Maisen, Attorney for District filed a Notice of Insufficiency (NOI) as to Student's complaint. The Office of Administrative Hearings (OAH) granted the NOI on August 1, 2011, and gave Student 14 days to file an amended complaint.

On August 12, 2011, Student filed an amended complaint. On August 19, 2011, the District filed an NOI as to the amended complaint.<sup>2</sup>

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,

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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> The order informed Parents of their right to seek assistance from a mediator to assist them in drafting a sufficient complaint. (Ed. Code, § 56505.) Parents did not request any assistance.

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

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 Individuals with Disabilities Education Act 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 five issues for hearing regarding the District’s purported failure to provide adequate special education services, primarily applied behavior analysis (ABA), to meet his unique needs. As to Issue One, Student fails to allege sufficient facts because he does not allege that the District permitting him to eat meat over the Parents’ religious objections denied him a FAPE.

In Issue 2, Student alleges that the District needs to provide him with a one-to-one aide for him to receive a FAPE. As in the original complaint, Student’s amended complaint on this issue is not adequate because Student fails to include information when he required the one-to-one aide, such as the date when Parents requested that the District provide this

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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).

service and when Student eloped from the classroom. Accordingly, Issue 2 is insufficiently pled.

In Issue 3, Student alleges that the District improperly delayed the development of his initial individualized education program (IEP) with the District and that the District failed to provide adequate services to meet his unique needs. This issue contains sufficient allegations as to the development of the February 28, 2011 IEP, including delays in its development and District using information as to another child in the IEP development. Additionally, the complaint sufficiently alleges that the IEP failed to provide Student with adequate goals, ABA services, and alternative means of communication. Therefore, Issue 3 is sufficient pled.

In Issue 4, Student alleges that the District requests improper information from his pediatrician regarding his health and ability to attend school and requesting Parents pick up Student from school for illness and improper behavior. As with Issue 1, Student fails to allege how the District's conduct denied Student a FAPE or that the District was not providing Student with adequate special education services to meet his unique needs. Accordingly, Issue 4 is insufficiently pled.

In Issue 5, Student alleges that the District's offer of ABA services is not adequate to meet his unique needs. While the complaint contains sufficient allegations in regards to the February 28, 2011 IEP, the IEP does not contain sufficient allegations as to any other IEPs. While the complaint refers to other IEP team meetings in which the District purported failed to offer adequate services, Student fails to provide the dates of these IEP team meetings. According, Issue 5 is limited to the February 28, 2011 IEP.

Student's proposed resolutions requests placement at a non-public school that provides appropriate autism instruction. A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (20 U.S.C. §1415(b)(7)(A)(ii)(IV).) The proposed resolutions stated in Student's complaint are well-defined, and therefore meet the statutorily required standard of stating a resolution to the extent known and available at the time.

Issue 3 and Issue 5, only as to the February 28, 2011 IEP, 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, 2, and 4, Student fails to allege sufficient facts supporting these claims to put the District on notice, and therefore these claims are insufficient.

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 Parents request the assistance of a mediator, they should contact OAH immediately in writing.

ORDER

1. Issue 3 and Issue 5, only as to the February 28, 2011 IEP, of Student's complaint are sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. Issues 1, 2, and 4 of Student's complaint are 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>9</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 Issue 3 and Issue 5, only as to the February 28, 2011 IEP, in Student's complaint.

Dated: August 22, 2011

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/s/  
PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings

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