

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT 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.<sup>2</sup>

On August 12, 2011, Student filed a first amended complaint. On August 19, 2011, the District filed an NOI as to the first amended complaint. On, August 22, 2011, OAH found Student's first amended complaint partly sufficient and partly insufficient. OAH again gave Student 14 days to file an amended complaint, and again informed Parents of their right to seek assistance from OAH to in drafting a sufficient complaint. Parents have not requested any assistance from OAH.

On September 5, 2011, Student timely filed a second amended complaint. On September 15, 2011, District filed an NOI as to the second amended complaint.

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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.

## 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 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 (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>

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

<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).

## DISCUSSION

Student's second amended complaint contains five issues for hearing regarding the District's alleged failures to provide appropriate and adequate special education services to meet his unique needs. OAH, in its order of determination of sufficiency dated August 22, 2011, found Student's Issues Three and Five sufficient, but only as to the individualized education program (IEP) team meetings of February 28, 2011, and Issues One, Two and Four were found to be insufficiently pled.

Issue One. This issue was found to be insufficiently pled in OAH's prior ruling. In Student's second amended complaint, Issue One continues to be deficient. While Student alleges that District allowed him to eat meat over Parents' objections based upon their religious beliefs, Student fails to provide any facts or contentions as to how this is a denial of a FAPE or otherwise denied him an educational benefit under the IDEA. Therefore, Issue One is insufficiently pled.<sup>9</sup>

Issue Two. This issue was earlier found to be insufficiently pled. However, in the second amended complaint, Student provided additional information regarding those IEPs that are alleged to be deficient. Specifically, Student alleges that the District denied him a FAPE because District failed to provide him a one-to-one aide in the IEPs of February 28, 2011, April 27, 2011 and June 2, 2011 in order to address his issue regarding elopement/running away. Student's second amended complaint on this issue is adequate because Student has included relevant information in the complaint regarding the relevant IEP team meetings, where District should have offered or provided him with a one-to-one aide. Accordingly, Issue Two is found to be sufficiently pled.

Issue Three. This issue has been held to be sufficiently pled, except as to the February 28, 2011 IEP. Student does not appear to have modified this issue in the second amended complaint. Therefore, as found earlier, Issue Three is sufficient pled as to the IEP team meeting of February 28, 2011.

Issue Four. This issue was earlier found to be insufficiently pled. However, the second amended complaint included additional facts and an allegation of a denial of FAPE due to District's failure to provide Student applied behavior analysis (ABA) services at the April 27, 2011 IEP. Parents allege that the failure resulted in behavior issues and regression in Student. As modified, Issue Four in Student's second amended complaint is sufficiently pled.

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<sup>9</sup> Furthermore, Parents' allegation that Student's constitutional rights (first amended right and free exercise of religion right) have been violated by District's action in permitting him to eat meat over the Parents' religious objections, appear to be outside OAH's jurisdiction.

Issue Five. This issue was earlier found to be sufficiently pled. However, while the earlier finding of sufficiency limited this issue to the February 28, 2011 IEP only, Student has included additional facts that the District improperly denied him ABA services at the February 28, 2011, April 4, 2011 and June 2, 2011 IEP team meetings despite Parents' requests. Therefore, the earlier finding of sufficiency on Issue Four is expanded to cover the April 4, 2011 and June 2, 2011 IEPs as well. According, Issue Five is found sufficient as to the February 28, 2011, April 4, 2011 and June 2, 2011 IEP team meetings.

Student's proposed resolutions continue to request 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.

With regard to Issues One, Student fails to allege sufficient facts supporting this claim to put the District on notice as to the basis of Student's claim, and allow the District to respond to the complaint and participate in a resolution session and mediation. Therefore, Issue One is insufficient.

Student's Issues Two through Five 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. Therefore, Issues Two through Five are sufficient, as limited above.

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. Issues Two through Five in Student's second amended complaint are sufficient under title 20 United States Code section 1415(b)(7)(A)(ii), as limited above.

2. Issue One of Student's second amended complaint is insufficiently pled under title 20 United States Code section 1415(c)(2)(D).<sup>10</sup>

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<sup>10</sup> In District's NOI, District requests that Student Issue One be dismissed in its entirety. This request will be addressed in a separate order.

6. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).<sup>11</sup>

7. 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.

8. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues Two through Five in Student's complaint as limited herein.

Dated: September 20, 2011

/s/

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ADENIYI AYOADE  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>11</sup> The filing of an amended complaint will restart the applicable timelines for a due process hearing.