

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN BENITO HIGH SCHOOL DISTRICT.

OAH CASE NO. 2011080575

ORDER OF DETERMINATION OF  
PARTIAL SUFFICIENCY OF DUE  
PROCESS COMPLAINT

On August 15, 2011 Student filed a Request for Due Process Hearing (complaint)<sup>1</sup> naming District. On August 30, 2011, District timely filed a Notice of Insufficiency (NOI) as to Student's complaint. For the reasons discussed below, the NOI is granted in part and denied in part.

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 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>

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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).

<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.

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 (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

Student’s complaint consists of 26 pages, 17 of which consist of factual allegations. Student alleges five issues for hearing, four of which contain multiple subparts. Student includes proposed resolutions. District’s NOI challenges issues 1(a), (b), (d), and (e), 2(a), (c), and (d), 3(a) and (b), 4 (c), (d), (e), (f), and (g), and 5 on the grounds that they lack specificity or fail to state a claim.

Student’s Issue 1 alleges that District denied Student a FAPE during the 2009-2010 school year through extended school year (ESY) by committing several procedural violations. In Issue 1(a) Student alleges that Student’s individualized education plan (IEP) team failed to adequately discuss Student’s goals through the school year, thereby denying parents meaningful participation in the IEP process. District argues that Issue 1(a) fails to allege how parents were denied meaningful participation and is not specific as to which goals are at issue. Issue 1(a) is sufficiently pleaded to put District on notice of Student’s claims and to prepare for a resolution session and mediation.

Issue 1(b) alleges that because District failed to timely present Parents with an assessment plan until September 24, 2009, several weeks after the school year started, the delay denied Parents the opportunity for meaningful participation in the IEP process and caused the loss of valuable educational time for Student. District challenges the claim on its merits rather than on the sufficiency of the pleading. Issue 1(b) is sufficiently pleaded to put

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<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 on notice of Student's claims and to prepare for a resolution session and mediation. Student is entitled to make a factual record at hearing on the merits of this claim and on District's defenses. An NOI is not a determination on the merits.

Issue 1(d) alleges that District failed to conduct an assessment for Student's vocational and transitional needs and failed to develop a transition plan for Student's post secondary status. Student further alleges that Student's IEP vocational goals were inappropriate. District argues that the claim is ambiguous as to whether it is a substantive or procedural claim, that it is identical to Issue 2(b), and that Student does not allege what would have been an appropriate transition plan for Student. Issues 1(d) and 2(c) (discussed below) differ in that 1(d) involves assessments and 2(c) involves the transition plan and related services. Issue 2(b) involves placement and services in the least restrictive environment and is not identical to 1(d). When read together with the remainder of the complaint, Issue 1(d) is sufficiently pleaded to put District on notice of Student's claims and to prepare for a resolution session and mediation.

Issue 1(e) alleges that District procedurally denied Student a FAPE by failing to provide timely progress reports from Student's 2010 ESY "job coach" thereby denying parents the opportunity for meaningful participation in the IEP development for the 2010-11 school year. District challenges this issue on its merits, claiming that Student fails to state a legal claim. Issue 1(e) is sufficiently pleaded to put District on notice of Student's claims and to prepare for a resolution session and mediation. Student is entitled to make a factual record at hearing on the merits of this claim and on District's defenses. An NOI is not a determination on the merits.

Issue 2 alleges that District substantively denied Student a FAPE during the 2009-10 school year through ESY. In Issue 2(a) Student alleges that District violated IDEA implementing inappropriate goals for the 2009-10 school year. District argues that the claim falls outside of the statute of limitations and is ambiguous. Issue 2(a) when read together with the facts alleged elsewhere in the complaint is sufficiently pleaded to put District on notice of Student's claims and to prepare for a resolution session and mediation. Whether or not this claim falls outside of the statute of limitations or fits within recognized exceptions is a matter that is not properly decided in an NOI, but only after Student has an opportunity to develop a factual record on the issue.

In Issue 2(c) Student alleges that District failed to provide Student with an appropriate transition plan and related services. When read together with Issue 1(d) and its related facts, Student alleges that he received coaching in jobs that had no relationship to an appropriate transition plan, thereby denying him a FAPE. District argues that Student does not specify which portions of the transition plan provided were insufficient, why the goals and services offered were inappropriate or what plan and services would have been appropriate. Issue 2(c) is sufficiently pleaded to put District on notice of Student's claims and to prepare for a resolution session and mediation.

In Issue 2(d) Student alleges that District failed to implement the recommendations of the non-public agency (NPA) providing 1:1 aide services to Student by refusing to fade Student's home program until Student demonstrated independence with homework and success at school. District argues the merits of this issue rather than its factual insufficiency. These allegations are sufficiently pleaded to put District on notice of Student's claims and to prepare for a resolution session and mediation. Student is entitled to make a factual record at hearing on the merits of this claim and on District's defenses. An NOI is not a determination on the merits.

In Issue 3, Student alleges that District procedurally denied Student a FAPE during the 2010-11 school year through ESY. Issue 3(a) alleges that District's failure to provide timely reports denied Parents meaningful participation in the development of Student's IEP, and in his individual transition plan. District argues this claim on its merits and contends the claim is ambiguous. These allegations when read together with the entire complaint are sufficiently pleaded to put District on notice of Student's claims and to prepare for a resolution session and mediation. Student is entitled to make a factual record at hearing on the merits of this claim and on District's defenses. An NOI is not a determination on the merits.

Issue 3(b) alleges that District failed to appropriately assess Student's vocational and post-secondary needs, and, as a result, that it failed to develop an appropriate transition plan and provide appropriate related services. District challenges this claim on its merits rather than on the sufficiency of the pleading. These allegations when read together with the entire complaint are sufficiently pleaded to put District on notice of Student's claims and to prepare for a resolution session and mediation. Student is entitled to make a factual record at hearing on the merits of this claim and on District's defenses. An NOI is not a determination on the merits.

In Issue 4, Student alleges that District substantively denied Student a FAPE during the 2010-11 school year through ESY. Issue 4(c) is identified as a claim for failure to develop an appropriate individual transition plan and provide appropriate services focused on Student's post-secondary educational and vocational needs. District argues the claim lacks specificity and consists only of a "header." Although this sub-issue is listed as a "header" in the pleading, when read together with the rest of the complaint, and in the context of Issue 2(c), the claim is sufficiently pleaded to put District on notice of Student's claims and to prepare for a resolution session and mediation.

Issue 4(d) alleges that District inappropriately replaced Student's in-home tutoring services with an insufficient study skills class. Student allegedly regressed in organizational skills and reading comprehension, suffered increased anxiety depression, and engaged in emotional outbursts and maladaptive behaviors. District argues that the claim lacks specificity and challenges the merits of the claim. These allegations when read together with the entire complaint are sufficiently pleaded to put District on notice of Student's claims and to prepare for a resolution session and mediation. Student is entitled to make a factual record

at hearing on the merits of this claim and on District's defenses. An NOI is not a determination on the merits.

Issue 4(e) alleges that District failed to address Student's social and emotional needs by making numerous changes to his educational program and services, including the home school component, causing him to spiral downward emotionally. Student allegedly voiced his own concerns about his educational program, and became more noticeably isolated and engaged in inappropriate social conversation and interactions with peers. District argues that Student failed to specify the portions of the IEP that were deficient or which IEPs are at issue, which changes to the educational program are at issue, or how the IEPs caused Student's downward spiral. District also argues that Student did not allege what District should have done to address Student's needs other than reinstating home school. This claim when read in conjunction with the entire complaint, and specifically pages 13-17, is sufficiently pleaded to put District on notice of Student's claims and to prepare for a resolution session and mediation. Student is entitled to make a factual record at hearing on the merits of this claim and on District's defenses. An NOI is not a determination on the merits.

Issue 4(f) alleges that District failed to provide Student with self-advocacy skills to cope with the constant changes in his routines. District argues that the claim fails to allege whether District failed to assess Student in this area of need, failed to include specific related services, failed to implement a particular IEP, or committed some other violation of IDEA. District also argues that this claim fails to allege how Student was deprived of an educational benefit as a result. This sub-issue, even when it is read together with the general fact allegations, is insufficiently pleaded. No facts are alleged that establish whether this claim is based upon a failure to assess, a failure to implement a specific IEP or some other failure, whether the IEP team was aware of the need for self-advocacy skills training, or how Student was harmed during the 2010-11 school year as a result. Student will be granted leave to amend issue 4(f), and, if he does so, he should include specific facts, including dates and reference to specific IEPs as discussed above.

Issue 4(g) alleges that District continued to disregard and failed to implement the recommendations from the NPA providing 1:1 services regarding home school. Student also alleges that District unilaterally terminated his home school program. District argues that the claim is confusing and that it fails on its merits. These allegations when read together with the entire complaint are sufficiently pleaded to put District on notice of Student's claims and to prepare for a resolution session and mediation. Student is entitled to make a factual record at hearing on the merits of this claim and on District's defenses. An NOI is not a determination on the merits.

Issue 5 alleges that District's offer of placement and services for the 2011-12 school year denied Student a FAPE. Student alleges that District's offer in its May 2011 proposed IEP and notice of placement was the same as for the previous two years, that Student's parents had repeatedly refused prior similar offers, and that District has offered no accommodations or services to address Student's social skills deficits. Student has, as a

result, demonstrated social and emotional attributes that have impacted him at school. District argues that Student does not explain why District's offer is inadequate, and that Student fails to allege a substantive impact. District also argues the merits of this claim. The allegations in Issue 5 when read together with the entire complaint are sufficiently pleaded to put District on notice of Student's claims and to prepare for a resolution session and mediation. Student is entitled to make a factual record at hearing on the merits of this claim and on District's defenses. An NOI is not a determination on the merits.

#### ORDER

1. Issues 1, 2 (a)-(e), 3, 4(a) – (e) and (g) – (i), and 5, of Student's complaint are sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

2. Issue 4(f) 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 1, 2 (a)-(e), 3, 4(a)-(e), 4(g)-(i), and Issue 5 in Student's' complaint.

Dated: September 2, 2011

/s/

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ADRIENNE L. KRIKORIAN  
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.