

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN RAMON VALLEY UNIFIED  
SCHOOL DISTRICT.

OAH CASE NO. 2011080822

ORDER GRANTING REQUEST FOR  
RECONSIDERATION, AND ORDER  
OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On August 18, 2011, Parent, on behalf of Student filed a Due Process Hearing Request<sup>1</sup> (complaint), naming the San Ramon Valley Unified School District (District). On September 7, 2011, Sarah L. Daniel, attorney for District, filed a Notice of Insufficiency (NOI) as to Student's complaint.

On September 9, 2011, the undersigned administrative law judge issued an order finding Student's complaint sufficient because District failed to file its NOI with the Office of Administrative Hearings (OAH) within the statutorily mandated time line of 15 days.<sup>2</sup> On September 16, 2011, District filed a motion for reconsideration on the grounds that it was not served Student's complaint until August 23, 2011. Student filed no response to the motion.

APPLICABLE LAW

OAH will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

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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(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).

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).

The complaint is deemed sufficient unless a party notifies OAH and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements.<sup>4</sup>

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>5</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>6</sup>

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”<sup>7</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>8</sup> Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.<sup>9</sup>

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

<sup>4</sup> 20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).

<sup>5</sup> 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

<sup>6</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>7</sup> Sen. Rep. No. 108-185, *supra*, at p. 34.

<sup>8</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>9</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

### *Reconsideration*

District alleges new facts in support of the request for reconsideration, as follows: although OAH was served with the complaint on August 18, 2011, District was not served on August 18, 2011, and did not receive the complaint until August 23, 2011. District provides support for its request for reconsideration in the form of sworn declarations by Sara L. Daniel and Tanya Meyers, who is employed by District in the Special Education Department. The declarations, along with supporting documents, establish that District did not receive Student's complaint until August 23, 2011. Accordingly, District's request for reconsideration is granted. District's NOI is deemed to have been timely filed and will be considered.

### *Sufficiency of Student's Complaint*

Student's complaint consists of a broad and general description of alleged incidents of abuse and mistreatment by District staff of Student and Parent. Student also alleges that District mishandled Student's grades, forced parent to pay for things that District should have funded, false statements in an individualized education program (IEP) and a false IEP.

Student's entire complaint is insufficiently pled in that it fails to provide District with the required notice of a description of the problem and the facts relating to the problem. For example, Student fails to provide any dates with respect to any of the alleged facts. Student fails to indicate whether he is qualified for special education or provide information regarding his placement and services. Student fails to state how the alleged actions of District have denied him a FAPE, prevented parental participation in the decision making process or constitutes a dispute as to either the identification, evaluation or educational placement of Student. Therefore, the complaint fails to provide sufficient information to District which would allow District to prepare a defense and participate in a resolution session and mediation.

**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.<sup>10</sup> Parent is encouraged to contact OAH for assistance if she intends to amend the due process hearing request.**

## .ORDER

1. District's request for reconsideration is granted.

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<sup>10</sup> Ed. Code, § 56505.

2. Student's complaint is deemed filed on August 23, 2011, and District's NOI is deemed timely filed on September 7, 2011.

3. Student's complaint is insufficiently pled under section title 20 United States Code 1415(c)(2)(D).

4. 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>

5. 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.

6. If Student fails to file a timely amended complaint, the complaint will be dismissed.

7. All dates previously set in this matter are vacated.

Dated: September 20, 2011

/s/

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MICHAEL G. BARTH  
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.