

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

STOCKTON UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2012031019

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On March 26, 2012 Student filed a Request for Mediation and Due Process Hearing<sup>1</sup> (complaint) naming District. On April 9, 2012, District timely 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 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 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 alleges three issues and proposed remedies. Issue one alleges that District has denied Student a free appropriate public education (FAPE) by failing to provide Student with “an aide” for prompting and monitoring, and failing to provide Student with adequate occupational therapy (OT) and speech and language (SL) services. Student does not identify under what category Student is eligible for special education, which IEP or IEPs are at issue, or what Student’s unique needs are in the context of the services Student alleges District failed to offer at appropriate levels.

Issue two alleges that Student has not received a FAPE “since his initial IEP meeting” and seeks compensatory services. Student does not identify when the initial IEP meeting took place, what subsequent IEPs are at issue, what unique needs District failed to address, or which portions of Student’s IEP or IEPs are inappropriate and why.

Issue three alleges that “District’s assessments” are inaccurate and do not meet all of Student’s needs. Student does not identify which IEPs are at issue, which assessments were inappropriate, why the assessments were inappropriate and what areas of unique needs District failed to appropriately assess.

The complaint is insufficiently pled in that it fails to provide District with the required notice of a description of the problem or problems and the facts relating to each of those

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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).

problems in order for District to respond to the complaint, and to prepare for a resolution session, mediation and hearing. Therefore, District NOI is granted.

### ORDER

1. Student's complaint is insufficiently pled under section Title 20 United States Code 1415(c)(2)(D).
2. 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>
3. 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.
4. If Student fails to file a timely amended complaint, the complaint will be dismissed.
5. All dates previously set in this matter are vacated.

Dated: April 11, 2012

/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.