

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN DIEGUITO UNION HIGH SCHOOL  
DISTRICT.

OAH CASE NO. 2012050089

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On April 26, 2012 Student filed a [Due Process Hearing Request]<sup>1</sup> (complaint) naming San Dieguito Union High School District (District) as Respondent.

On May 1, 2012, District filed a Notice of Insufficiency (NOI) as to Student's complaint. Student filed an opposition to the NOI on May 4, 2012.

District contends Student's complaint should be dismissed in its entirety because the complaint does not meet sufficiency requirements and the complaint fails to provide sufficient facts with which support any of Student's allegations. District does not separately challenge the sufficiency of the proposed resolutions asserted in the 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

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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).

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>

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

The complaint contains 14 problems or issues, some of which are sufficient and some which are insufficient. The issues are discussed below.

Issues five through nine and 11, 12, and 14 are sufficiently pled to put District on notice as to the basis of Student’s claims. Issue Five alleges District failed to implement a June 2011 individualized educational program (IEP) that was signed by parent and Student regressed in his academics. Issue six essentially alleges District failed to implement the March 16, 2012 IEP signed by parent. Issue six also alleges that District denied Student transportation to implement the IEP which caused Student to regress in his academics. Issue seven alleges District failed to implement Student’s placement in accordance with the June 2011 IEP and further unilaterally decided to place Student in a private school on April 16, 2012 that did not meet Student’s unique needs. Issue eight alleges District failed to offer a

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<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.

<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).

free appropriate public education (FAPE) by unilaterally deciding that Student was not “diploma bound” without considering parent’s decision. Issue nine alleges that District failed to treat parent as part of the IEP team, which is a claim that District denied a FAPE because the parents were not participants in the IEP process. Issue eleven alleges District failed to provide Student, who is 16.5 years of age, with transition services. Issue 12 alleges District failed to provide staff capable of implementing the IEP offered by District and Issue 14 makes allegations similar to Issue six that District denied Student transportation services. Each of the issues discussed here is sufficiently pled so as to provide an awareness and understanding of the issues forming the basis of the complaint and provide District with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation

A complaint is also 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 five through nine and 11, 12, and 14 of the complaint are sufficiently defined. Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

With regard to Issues one through four, and 10 and 13, of the complaint the allegations are written in incomplete sentences with vague references to different school years, grades, placements, and/or programs. Here, Student fails to intelligibly describe the nature of the problems and the facts relating to the problems resulting in a denial of FAPE. Issues one through four and 10 and 13 fail to state sufficient facts supporting Student’s claim, and these claims are insufficient. The proposed resolutions are equally insufficient.

A parent who is not represented by an attorney may request that the Office of Administrative Hearings (OAH) provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint.<sup>8</sup> Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

## ORDER

1. Issues five through nine and 11, 12, and 14 of Student’s complaint are sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

2. Issues one through four, and 10 and 13 of Student’s complaint are insufficiently pled under Title 20 United States Code section 1415(c)(2)(D).

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<sup>8</sup> Ed. Code, § 56505.

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 Issues five through nine and 11, 12, and 14 of Student's complaint.

Dated: May 04, 2012

/s/

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STELLA OWENS-MURRELL  
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.