

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN JUAN UNIFIED SCHOOL  
DISTRICT; TWIN RIVERS UNIFIED  
SCHOOL DISTRICT.

OAH CASE NO. 2012090646

ORDER GRANTING SAN JUAN  
UNIFIED SCHOOL DISTRICT'S  
NOTICE OF INSUFFICIENCY

On September 20, 2012, Parent on behalf of Student filed a Due Process Hearing Request<sup>1</sup> (complaint) naming as respondents San Juan Unified School District (San Juan) and Twin Rivers Unified School District (Twin Rivers). On September 27, 2012, Twin Rivers timely filed a Notice of Insufficiency (NOI) and a Motion to Dismiss as to Student's complaint. On September 28, 2012 OAH issued an Order granting Twin Rivers' NOI and deeming its motion to dismiss moot. All dates were vacated only as to Twin Rivers. On September 28, 2012, San Juan timely filed a NOI. For the reasons discussed below, the NOI is granted as to San Juan.

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

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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).

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>

If a special education student violates a code of student conduct, school personnel may remove the student from his or her educational placement without providing services for a period not to exceed 10 days per school year, provided typical children are not provided services during disciplinary removal. (20 U.S.C. § 1415(k)(B); 34 C.F.R. § 300.530(b)(1) & (d)(3) (2006). The removal of a special education student from his placement for more than 10 consecutive school days constitutes a change of placement. (34 C.F.R. § 300.536(a)(i).) A student receiving special education services may be suspended or expelled from school as provided by federal law. Suspension or expulsion of special education students is governed by title 20 United States Code section 1415(k); title 34 Code of Federal Regulations, part 300.350, et seq., and Education Code, § 48915.5. When a school district changes the placement of a student receiving special education services for specific conduct in violation of a student code of conduct, the student is entitled to certain procedural protections. A parent who disagrees with any decision regarding a manifestation determination under Title 20 United States Code section 1415(k)(1)(E) may request a hearing. (20 U.S.C. § 1415(k)(3)(A).) In appropriate circumstances, the ALJ hearing

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<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).

the dispute may order a change in placement of the student, and may return the student to the placement from which he was removed. (20 U.S.C. §1415(k)(3)(B)(ii).)

## DISCUSSION

Here, Student's complaint alleges that Rio Linda High School initiated expulsion proceedings against Student in early September, 2012, and has not allowed him to return to school. Student's complaint attaches a letter from Twin Rivers setting a date for an expulsion hearing on September 26, 2012, a notice of an IEP meeting, a copy of Student's individualized education program (IEP) dated January 23, 2012, and several suspension notices from Twin Rivers. The complaint also alleges that "the Districts" failed to provide Student with a positive behavior intervention plan "in his IEP," and that none of the administrators, educators or special education case managers supplied a "road map or plan" that considered Student's disability in the context of his education plan. Student also alleges that the respondents failed to provide Student with an environment in which learning can occur, in light of an unspecified "diagnosed disorder" that impacts Student's ability to learn.

Student seeks an "expeditious" due process hearing to address violations of Student's rights under the Individuals with Disabilities Education Act. However, Student's complaint is ambiguous as to whether Student is seeking an expedited hearing challenging a manifestation determination meeting by either District based upon his suspensions immediately prior to filing the complaint. If in fact he is, then his claim for an expedited hearing, if pleaded properly, must be severed from the non-expedited issues, and two hearing dates must be set, one for an expedited hearing on the expedited issues, and one for the non-expedited issues.

Student also does not allege any facts that establish that a manifestation hearing ever took place, whether or not Student is challenging a manifestation hearing that would entitle Student to an expedited hearing, whether he was placed in an alternative educational setting, or whether either or both respondent districts provided or failed to provide educational instruction to Student during the alleged suspension/expulsion, etc. Without more facts, OAH cannot determine whether or not this complaint should be heard on an expedited basis.

Additionally, the complaint does not state sufficient facts to put San Juan on notice of the claims against it, including when Student attended San Juan, which IEP's are at issue, what his placement and services were, and how and when San Juan denied Student a free appropriate public education (FAPE). Without more facts, the complaint is not sufficient to put San Juan on notice of the claims against it in order to prepare for and participate in a resolution session, mediation and due process hearing.

Additionally, 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).) Here, Student has not identified any proposed resolutions and therefore the complaint is also insufficient in that regard.

San Juan's NOI is granted and Student shall be granted leave to amend.

Parents are advised that under Education Code section 56505, a parent who is not represented by an attorney may request that the Office of Administrative Hearings provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. Parents are encouraged to contact OAH at (916) 263-0880 for assistance in amending their due process hearing request.

### ORDER

1. Student's complaint is insufficiently pled under section Title 20 United States Code 1415(c)(2)(D) as to San Juan.

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> If Student is seeking an expedited hearing, Student shall plead the appropriate facts and state with specificity the factual basis for his request for an expedited hearing.

3. The amended complaint shall comply with the requirements of Title 20 United States Code section 1415(b)(7)(A)(ii), including proposed resolutions to the extent known and available to Student at the time of filing, 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 as to San Juan.

Dated: October 2, 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.