

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SANTA ROSA CITY SCHOOLS.

OAH CASE NO. 2012110693

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT, AND DENYING  
REQUEST TO DISMISS

On November 26, 2012, Parent, on behalf of Student (Student), filed a Request for Due Process Hearing<sup>1</sup> (complaint) naming the Santa Rosa City Schools (District)<sup>2</sup>.

On November 27, 2012, District filed a Notice of Insufficiency (NOI) as to Student's complaint, or in the alternative a Motion to Dismiss Student's complaint.<sup>3</sup>

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.<sup>4</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).

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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> While Student's Complaint identified the responsible district as "Santa Rosa High School District," the correct designation for District is Santa Rosa City Schools.

<sup>3</sup> District requests for a dismissal of Student's complaint on the ground that the complaint fails to identify any issues or disputes relating to the provision of special education and related services by the District. However, District's Motion to Dismiss is deemed moot, because Student's complaint is found to be insufficient as pled herein, and Student shall be granted leave to amend the complaint. District may present a new Motion to Dismiss Student's complaint upon the filing of an amended complaint, as necessary.

<sup>4</sup> 20 U.S.C. § 1415(b) & (c).

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 Individuals with Disabilities Education Act 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>

## DISCUSSION

Student’s complaint raises one issue regarding whether District should allow Student to attend school without wearing shoes due to his alleged disability of Asperger’s Syndrome. As a proposed resolution, Student requests that he should be allowed to attend school without a need to wear any shoes.

Student’s complaint raises no issues regarding the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the

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<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).

provision of a FAPE to the Student. The complaint makes no allegation that District has denied Student a FAPE, and fails to provide any information or facts showing when or how such denial of FAPE might have occurred. The complaint fails to provide District with the required notice of a description of the problem, alleged violations or facts relating to a denial of FAPE. Therefore, Student's complaint is inadequate to put District on notice with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.

Accordingly, Student's complaint is insufficiently pled.

**Pursuant to Education Code section 56505, subdivision (e)(6), 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. If Parent requests the assistance of a mediator in identifying the issues, Parent should contact OAH immediately in writing.**

#### 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>10</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.

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<sup>10</sup> The filing of an amended complaint will restart the applicable timelines for a due process hearing.

6. District's Motion to Dismiss is denied as moot.

Dated: November 28, 2012

/s/

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ADENIYI AYOADE  
Administrative Law Judge  
Office of Administrative Hearings