

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

CAPISTRANO UNIFIED SCHOOL  
DISTRICT AND ORANGE COUNTY  
MENTAL HEALTH.

OAH CASE NO. 2009070225

DETERMINATION OF SUFFICIENCY  
OF DUE PROCESS COMPLAINT

On July 06, 2009, Jillian Bonnington, Advocate, filed a Due Process Hearing Request<sup>1</sup> (complaint) on behalf of Student (Student), naming Capistrano Unified School District (District) as a respondent.

On July 16, 2009, Ernest Bell, Esq., filed a Notice of Insufficiency (NOI) on behalf of the District, as to Student's complaint.

APPLICABLE LAW

The respondent to a due process hearing request has the right to challenge the sufficiency of the complaint. (20 U.S.C. § 1415(b) & (c).)<sup>2</sup> The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of 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. (§ 1415(b)(7)(A)(ii)(III) & (IV).) The purpose of these requirements is to promote fairness by providing respondents with a specific understanding of the allegations and to provide a school district with sufficient information to make a specific response to the complaint as

---

<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> All statutory citations are to Title 20 United States Code unless otherwise noted.

required by section 1415(c)(2)(B), and to participate in a resolution session and mediation under section 1415, subsections (e) and (f). (See H.R.Rep. No. 108-77, 1st Sess. (2003) [the House Committee on Education and the Workforce stated that the requirement of a clear and specific notice is essential to make the complaint process work in a fair and equitable manner]; Sen. Rep. No. 108-185, 1st Sess. (2003) [the Senate Committee on Health, Education, Labor and Pensions stated that the purpose of the sufficiency requirement is to ensure that the respondent will have an awareness and understanding of the issues forming the basis of the complaint, to prevent the respondent from having to prepare for any and every issue that could possibly be raised, and to give the respondents sufficient information to provide specific responses and to participate in resolution sessions and mediation].) In addition, fundamental principles of due process apply to administrative proceedings in special education matters. The respondent is entitled to know the nature of the specific allegations being made against it, such that respondent may be able to prepare a defense. (*Tadano v. Manney* (9th Cir. 1947) 160 F.2d 665, 667; *Hornsby v. Allen* (5th Cir. 1964) 326 F.2d 605, 608.)

A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (§1415(b)(7)(A)(ii)(IV).

## DISCUSSION

Student's complaint alleges 14 issues, as follows:

1. Issue One of Student's complaint alleges that pursuant to the June 17, 2009 IEP, the District recommended placement at Wood Canon in a Behavior Intervention Class (BIC) which the parents rejected as Student's placement. Parents contend that the proposed placement does not constitute the least restrictive environment for Student, and the District failed to consider a continuum of (or other) placements for Student. Issue One is sufficiently pled to put the District on notice as to the basis of Student's claim.

2. Issue Two of Student's complaint alleges that on March 2, 2009, the District referred Student to Orange County Mental Health (OCMH), and reported that Student had received weekly counseling and twice weekly behavioral services from the District since 2008, however these services are not documented in Student's IEPs, nor is there evidence that the services were provided to Student, thereby denying Student a FAPE. The District contends that Issue Two is no more than a laundry list of putative procedural violations which fails to identify any substantive harm. While Issue Two may represent procedural violations, they are clearly identified, and determination of the issue's substantive weight is a question to be determined at hearing by the Administrative Law Judge. Issue Two is sufficiently pled to put the District on notice as to the basis of Student's claim.

3. Issue Three of Student's complaint alleges that the District failed to develop goals that comport with Student's needs, specifically, the District provided no goals to address Student's behavior, which resulted in a denial of educational benefit. Issue Three is

insufficient as it fails to clearly identify which IEP or IEPs should have contained behavior goals, and it fails to indicate what behavioral goals or services Student required.

4. Issue Four of Student's complaint alleges that at the June 1, 2009 IEP meeting the District indicated that it provided IBI and behavior intervention to Student during the month of May 2009, yet the district failed to capture this alleged service in any written offer contained in Student's IEP, resulting in a denial of parental participation in the IEP process. Issue Four is insufficient as Student has failed to indicate whether the alleged behavior interventions were intended to be part of the IEP, and whether such services were of benefit to Student.

5. Issue Five of Student's complaint alleges that the District failed on numerous occasions to provide observation documents and records for Student. Issue Five is insufficient as it fails to indicate when Student requested documents and what documents were requested.

6. Issue Six of Student's complaint alleges that the District failed to have the Speech and Language provider present at the IEP meeting. Issue Six is insufficient as it fails to allege facts to support the allegation that the Speech and Language provider was a necessary party at this IEP meeting.

7. Issue Seven of Student's complaint alleges that at the March 6, 2009 IEP meeting the District's OT assessor recommended a classroom sensory diet for Student, which has never been implemented. Issue Seven is insufficient as it fails to state what recommendations were made, what the District offered in the IEP, and what portion of the IEP was not implemented.

8. Issue Eight of Student's complaint alleges that the parents were not provided a copy of the February 9, 2009 IEP. The District contends that even if true, this allegation does not indicate that any substantive denial of FAPE resulted. While Student's allegation, as presented, begs the question of material relevance, it nevertheless alleges a per se procedural violation, and as stated in paragraph two, determination of the issue's substantive weight is a question to be determined at hearing by the Administrative Law Judge. Issue Eight is sufficiently pled to put the District on notice as to the basis of Student's claim.

9. Issue Nine of Student's complaint alleges that at the March 6, 2009 IEP meeting, the District's OT indicated that Student's assessment showed he had sensory processing problems, and that the District failed to conduct additional assessments until June 17, 2009, when Student's Advocate requested the assessments. Issue Nine is insufficient as it fails to provide sufficient information to allege that the District's assessment was faulty or incomplete; that the District had an obligation to provide additional OT assessment; or that Student requested additional OT assessments prior to June 17, 2009.

10. Issue 10 of Student's complaint alleges that the District failed to develop any goals or services to address the sensory issues noted in the assessment and notes pages of the

March 6, 2009 IEP. Issue 10 is insufficient as it alleges no facts to support the allegation; does not identify which assessment to which it is referring; and fails to allege a denial of FAPE.

11. Issue 11 of Student's complaint alleges that the District's offer of placement in a BIC does not comport with Student's needs and denies him access to his education in the least restrictive environment. While Issue 11 repeats Student's LRE contention, Issue 11 fails to allege any additional facts to support Student's claim, specifically by failing to indicate how the BIC fails to comport with Student's needs. Issue 11 is insufficient.

12. Issue 12 of Student's complaint alleges that the District implemented IBI and behavior support services for Student; that Student performed in the 50 to 100% increase in on task and compliant behavior while receiving the services; and that the data support Student's placement in a less restrictive environment with proper supports. Issue 12 is insufficient as it contains no independent legal issue. The information contained in Issue 12, shall remain as part of the factual allegations in support of Student's claims regarding LRE.

13. Issue 13 of Student's complaint alleges that the District failed to take into consideration the parents' and Student's private therapist's input that Student was trying new medications that would impact his behaviors. Issue 13 is insufficient as it fails to identify at which IEP meeting the alleged events took place; fails to indicate what information the parents offered; and how the District's placement offer failed to comport with Student's needs.

14. Issue 14 of Student's complaint applies to OCMH only and is not subject to this NOI.

As discussed above, a respondent is entitled to know the basis of each claim and the nature of the specific allegations being made against it, with respect to each issue or problem, so that the respondent may be able to prepare a response, prepare for a resolution meeting, or prepare a defense for hearing. Issues 1, 2, and 8, are sufficiently pled to put the District on notice as to the basis of Student's claims. Issues 3 through 7, and 9 through 13, fail to provide the District with sufficient notice pursuant to statute.

Student's proposed resolutions request (1) District funding of Student's placement in a non-public school; (2) District and OCMH reimbursement to parents for out of pocket costs; and (3) compensatory educational services according to proof. A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. The proposed resolution stated in Student's complaint is not well-defined, However, Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

ORDER

1. Pursuant to section 1415(b)(7)(A)(ii), Issues 1, 2, and 8 of Student's complaint are sufficient.

2. Pursuant to section 1415(c)(2)(D), Issues 3 through 7, and 9 through 13 of Student's complaint are insufficiently pled.

Pursuant to section 1415(c)(2)(E)(i)(II), Student shall be permitted to file an amended complaint.<sup>3</sup>

4. The amended complaint shall comply with the requirements of 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 Student's Issues 1, 2, and 8.

Dated: July 20, 2009

/s/

---

JUDITH PASEWARK  
Administrative Law Judge  
Office of Administrative Hearings

---

<sup>3</sup> The filing of an amended complaint will restart the applicable timelines for a due process hearing.