

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

WEST SONOMA COUNTY UNION HIGH  
SCHOOL DISTRICT.

OAH CASE NO. 2011030425

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On March 8, 2011, Student filed a Due Process Hearing Request<sup>1</sup> (complaint) naming West Sonoma County Union High School District (District) as the respondent. The complaint lists 84 issues and is accompanied by a nine page recitation of related facts. For all issues, Student stated proposed resolutions of compensatory education, money damages, grade changes, reassignment of staff, training of parent and teachers, reimbursement of advocate fees, and counseling. On March 15, 2011, District filed a Notice of Insufficiency (NOI), challenging the sufficiency of the notice provided by the complaint. As discussed below, the complaint is sufficient as to all issues except Issues 1-4, 68-73, and 83. Student will have the option of amending the complaint, or proceeding on the sufficient issues only.

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>

## DISCUSSION

Issues 1-4 are insufficient because they allege a denial of a FAPE in various school years and nothing more. There is no way for District to determine which of the supporting facts, if any, relate to these allegations. District cannot determine if Student contends his placement, services, or IEP procedures were out of compliance with IDEA, or whether Student is complaining that his services were not properly implemented.

Issues 5-8, 79-82, and 84, all allege with sufficient supporting facts that Student was denied a FAPE because of denial of parental participation in the IEP process during various school years.

Issues 9-12 all allege with sufficient supporting facts that Student was denied a FAPE because parent concerns regarding transition were not written on the IEP document during various school years.

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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).

Issues 13-16 all allege with sufficient supporting facts that Student was denied a FAPE because his IEP did not state his needs based on prenatal conditions during various school years.

Issues 17-21 all allege with sufficient supporting facts that Student was denied a FAPE because his IEP did not state his asthma-related needs during various school years.

Issues 22-25 all allege with sufficient supporting facts that Student was denied a FAPE because his IEP did not state how goals would be measured during various school years.

Issues 26-29 all allege with sufficient supporting facts that Student was denied a FAPE because his IEPs did not state how progress would be reported during various school years.

Issues 30-41 all allege with sufficient supporting facts that Student was denied a FAPE because his IEPs in various school years did not contain a statement of special education and related services based on peer reviewed research to the extent practicable to address the following: achieving annual goals, make progress in the general education curriculum and extracurricular activities, and participate with disabled and non-disabled peers in extracurricular and non-academic activities.

Issues 42-45 all allege with sufficient supporting facts that Student was denied a FAPE because his IEP did not state the accommodations for state and district testing during various school years.

Issues 46-49 all allege with sufficient supporting facts that Student was denied a FAPE because his teachers did not know his IEP content during various school years.

Issues 50-53 all allege with sufficient supporting facts that Student was denied a FAPE because the IEP team did not consider the use of positive behavior interventions to address Student's attention deficit.

Issues 54-55 allege with sufficient supporting facts that Student was denied a FAPE because District did not refer him for assessment after he received low math grades during various school years.

Issues 56-59 all allege with sufficient supporting facts that Student was denied a FAPE because the RSP study skills class he was provided was of an insufficient to meet his needs during various school years.

Issues 60, 61, and 64-67, all allege with sufficient supporting facts that Student was denied a FAPE because Student was given low grades despite disability related absences during various school years.

Issues 62-63 all allege with sufficient supporting facts that Student was denied a FAPE because he was not provided with home tutoring during disability-related absences in various school years.

Issues 68 and 69 are insufficient. OAH does not have jurisdiction over Section 504 of the Rehabilitation Act or general constitutional Equal Protection claims. The sole allegation in these issues is a denial of a 504 Plan without any indication of how a FAPE was denied under the IDEA.<sup>8</sup>

Issues 70-73 are insufficient. Student does not allege a denial of a FAPE, nor any specifics about what specifically should have been done differently to provide “a ‘result oriented’” education during the school years alleged.

Issues 74-78 all allege with sufficient supporting facts that Student was denied a FAPE because his operative IEPs did not state present levels of performance during various school years.

Issue 83 is insufficient. No specific school years are indicated. In addition, it cannot be determined whether it is a summary of other issues related to measurable goals, is an allegation that IEPs were not understandable, or something else.

The complaint also contains sufficient allegations or proposed resolutions. In its NOI, District contended that the proposed resolutions were insufficient because there were not linked to any particular issue and/or included claims for relief that could not be granted in an IDEA due process hearing. 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, it is obvious from the complaint that Student is seeking the proposed resolutions as to each issue alleged. Further, although some of the proposed resolutions may not technically be “available” to Student in an IDEA hearing (for example, but not limited to: terminating employment of District staff or money damages under civil rights law), it can generally be understood that Student is seeking some type of compensatory education award in the form of tutoring. Thus, the proposed resolutions are sufficient.

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<sup>8</sup> In contrast, to the extent Issues 13-21, 50-54, and 56-67, contained allegations outside of OAH jurisdiction, such as Section 504 claims, or constitutional Equal Protection claims, these claims were sufficient for purposes of an NOI because they also alleged that Student was denied a FAPE under the IDEA.

ORDER

1. Issues 5-67, 74-82, and 84 of Student's complaint are sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

2. Issues 1-4, 68-73, and 83 of Student's complaint are insufficiently pled under Title 20 United States Code section 1415(c)(2)(D).

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> 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. Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

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 5-67, 74-82, and 84 of Student's complaint.

Dated: March 17, 2011

/s/

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RICHARD T. BREEN  
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.