

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SHASTA UNION HIGH SCHOOL  
DISTRICT AND DEL NORTE COUNTY  
UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2011100373

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On October 6, 2011, Student filed a Due Process Hearing Request<sup>1</sup> (complaint) against the Shasta Union High School District (Shasta) and Del Norte County Unified School District (Del Norte). On October 17, 2011, Shasta filed a Notice of Insufficiency (NOI) as to Student's complaint. On October 21, 2011, the Office of Administrative Hearings granted Shasta's NOI, finding the complaint to be insufficient, and giving Student 14 days to file an amended complaint.

On November 1, 2011, Student filed an amended complaint against Shasta and Del Norte. On November 10, 2011, Shasta filed an NOI as to the amended 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 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 Individuals with Disabilities Education Act 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

Student’s complaint contains six issues for hearing regarding Student not being offered adequate special education services and not having adequate interaction with non-disabled peers in his individualized education program (IEP). According to the amended complaint, Student resided within the geographical boundaries of Del Norte with his Parent, who still lives within Del Norte. Student presently resides in a group home within the geographical boundaries of Shasta.

In Issue 1, Student alleges sufficient facts that Shasta denied him a FAPE because it did not provide him with adequate behavioral services so he would not have to be segregated from general education students. Therefore, Issue 1 is sufficient.

In Issue 2, Student alleges sufficient facts that Shasta denied him a FAPE by not providing him with adequate behavioral services, failing to implement his IEP and not reporting serious incidents, which endangered his safety. In Issue 3, Student alleges sufficient facts that Shasta denied him a FAPE by failing to adequately address his

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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).

communication deficits and not implementing his IEP as to communication services and supports.

In Issue 4, Student alleges sufficient facts that Shasta violated his procedural rights by not holding a timely IEP team meeting when he moved into geographical boundaries of Shasta, why Shasta's IEP offers have not provided him with a FAPE and how Shasta has not implemented his IEP.

In Issue 5, Student alleges sufficient facts that Shasta has not implemented his September 9, 2011 IEP because it cannot provide him with speech and language services because Shasta has not met his behavioral needs. Finally as to Issue 6, Student alleges sufficient facts that Shasta has violated his procedural rights because the September 9, 2011 IEP documents are not complete, which does not permit Parent to meaningfully participate in the educational decision-making process and deprives Student of an educational benefit.

Student's proposed resolutions requests that districts provide Student with a more inclusive placement, provide him with additional behavioral and communication supports and services, conduct a functional behavioral assessment, compensatory educational and speech and language services and reimbursement. 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).) The proposed resolutions stated in Student's complaint are well-defined, and therefore meet the statutorily required standard of stating a resolution to the extent known and available at the time.

Therefore, Student's complaint is sufficiently pled to put Shasta and Del Norte on notice as to the basis of Student's claims to permit Shasta and Del Norte to respond to the complaint and participate in a resolution session and mediation.

## ORDER

1. The amended complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: November 14, 2011

/s/  
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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings