

**BEFORE THE STATE BOARD OF EDUCATION**

In re: ██████████ )  
 )  
and ) Case No. SE-2215-2008E  
 ) Impartial Hearing Officer  
Akron City School District ) Todd Anthony Mazzola  
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 )  
 ) **ORDER ON DISTRICT'S**  
 ) **SUFFICIENCY CHALLENGE**  
 ) **AND CONSOLIDATION**  
 ) **REQUEST**

On December 29, 2008, I received, via facsimile, the Akron City School District's (the "District") combined sufficiency challenge, motion to dismiss (based on the statute of limitations), request for removal from expedited to standard due process schedule, and request to consolidate or transfer the hearing. The combined challenge and motion shows that it was served on both the Parent and the Parent's counsel.<sup>1</sup> At the date of this writing, I have received no response.

Because, pursuant to 20 U.S.C. § 1415(c)(2)(D), I must make a determination on the face of the due process complaint notice concerning whether it meets the requirements of subsection 20 U.S.C. § 1415 (b)(7)(A), within five days of receiving the challenge, I address in this order only the District's sufficiency challenge and the consolidation request.

**A. Sufficiency Challenge.**

A facially sufficient due process complaint notice must include all of the following items:

1. The name of the child, the address of the residence of the child (or available contact information in the case of a homeless child<sup>2</sup>), and the name of the school the child is attending;

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<sup>1</sup> The facsimile cover that I received indicated that the letter was mailed to the Parent on that date and does not indicate whether it was faxed to the Parent's counsel.

<sup>2</sup> In the case of a homeless child or youth (within the meaning of section 11434a (2) of title 42), the due process complaint notice must include available contact information for the child and the name of the school the child is attending. 20 U.S.C. § 1415 (b)(7)(A)(ii)(II).

2. A description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem; and
3. A proposed resolution of the problem to the extent known and available to the party at the time.

20 U.S.C. § 1415 (b)(7)(A)(ii)(I)-(IV). *Schaeffer v. Weast*, 126 St. Ct. 528, 532 (2005) and *Escambia County v. Benton*, 406 F. Supp. 2d 1248, 1259-1260 (S.D. Ala 2005) reinforces that the sufficiency of a due process request is a minimal pleading standard that is lower even than the “notice pleading” standard for reviewing complaints in court.

With respect to sufficiency, the District first argues that “the complaint fails to provide the name and address of the student’s current school.” The challenge seems to be inextricably tied to the District’s argument in its motion to dismiss that the Student was withdrawn from attendance by his mother over two years ago. However, to reach that conclusion, I would necessarily have to go off the face of the complaint notice and rely on evidentiary materials submitted by the District. That is not permitted by 20 U.S.C. § 1415(c)(2)(D). On its face, the complaint notice identifies Kenmore High School as the school the child is attending – that is enough to meet the sufficiency challenge.

Next, the District argues that the complaint notice is insufficient because it contains the name and signature of [REDACTED] (presumably [REDACTED]’s parent), while, in a contrary fashion, it indicates (by check-mark) that a hearing is being requested by “a Student with a Disability Who Is At Least 18 years Of Age But not More Than 21 Years of Age.” While this, in combination with the statement in the complaint notice that the Student’s birthday is September 30, 1990, raises “standing” concerns under 20 U.S.C. § 1415(m), it does not provide a basis to dismiss on the grounds of insufficiency. All that the notice requires is the name of the child and his address of residence – those are provided in the complaint notice under review.

Finally, the District’s challenge states that the complaint notice is insufficient because it fails to state the name of the superintendent of the school district of residence. While the Ohio Department of Education due process complaint notice form provides a blank for the “Superintendent and School District of Residence,” 20 U.S.C. § 1415 (b)(7)(A)(ii)(I)-(IV) does not require that information – it requires only “the name of the school the child is attending.” The same is true of Ohio Administrative Code § 3301-51-05(K)(8)(b) and 34 C.F.R. § 300.508(b)(1)-(4).

Based on all of the above, the District’s sufficiency challenge is overruled.

## **B. Request for Consolidation/Transfer.**

The District has also requested that I transfer or consolidate this case with SE-2207-2008E, based on the fact that the cases are apparently brought by the same parent

(on behalf of different children). I do not believe that I have authority to order case SE-2207-2008E consolidated into this docket and will not order this case transferred to Hearing Officer Taich's docket. The fact that the same parent and school district are involved does not necessarily indicate that judicial economy would be served by consolidation. In fact, if a hearing is ultimately necessary, it may be best that the facts of each case are established in a separate record so they are not confused.

My understanding is that such requests may be directed (and has in this case been directed) to the Ohio Department of Education. My understanding is also that the Department is unlikely to consider such a request unless it is jointly made by the parties. I will follow an order of consolidation should it come down from the Department, but will not order one here.

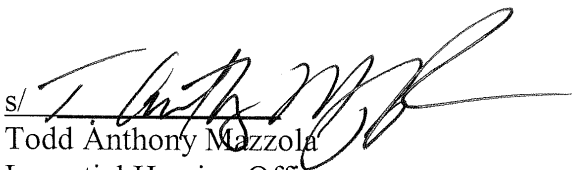
### **C. Issues Left for Consideration.**

While I do not (and believe I cannot in according due process) rule today on the motion to dismiss based on the statute of limitations, the issue of standing (assuming the hearing is being brought by the Parent), and the issue of whether the request really meets the expedited request requirements, I do believe that these are preliminary issues that need to be promptly addressed. I have attempted (over the holidays) to contact the person indicated as Petitioner's counsel to get a sense of whether there is a need to set a briefing schedule on some or all of these issues, but have not been successful to date.

With this order I direct Parent's designated counsel to contact me immediately so that we can discuss these issues and, at the same time, make arrangements to schedule for the hearing, if a hearing remains necessary.

It is so **ordered**.

Signed this day of January 2, 2009 at Akron, Ohio

s/   
Todd Anthony Mazzola  
Impartial Hearing Officer

### **CERTIFICATE OF SERVICE:**

This certifies that a copy of this Order was mailed to the interested parties and representatives at the addresses listed below on January 2, 2009 by First Class mail and electronic mail.

**Parties:**

Parent/Petitioner



Parent/Petitioner's Designated Counsel

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S.D. Representative:

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