

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA**

<b>J.Z.J., by and through his parent, J.J.;</b>	:	
<b>and J.J.,</b>	:	
<b>                  Plaintiffs,</b>	:	
	:	<b>Docket No.:</b>
<b>v.</b>	:	<b>OSAH-DOE-SE-1436689-33-Miller</b>
	:	
<b>COBB COUNTY</b>	:	
<b>SCHOOL DISTRICT,</b>	:	
<b>                  Defendant.</b>	:	

**ORDER ON NOTICE OF INSUFFICIENCY**

On April 23, 2014, the Defendant, the Cobb County School District (“District”), filed a timely challenge to the sufficiency of the Plaintiffs’ Amendment to Due Process Filing (“Amended Complaint”), in accordance with 20 U.S.C. §§ 1415(c)(2)(A), (C) and 34 C.F.R. § 300.508(d). As set forth below, the Plaintiffs’ Amended Complaint is insufficient to meet the requirements of the Individuals with Disabilities Education Improvement Act of 2004 (“IDEA”) and is subject to dismissal unless properly amended.

IDEA authorizes a parent to file a due process complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” 20 U.S.C. § 1415(b)(6)(A). The complaint must allege a violation that occurred within a two-year statute of limitations, subject to certain exceptions. 20 U.S.C. § 1415(b)(6)(B). IDEA further requires that the complaint contain the following:

- (I) the name of the child, the address of the residence of the child (or available contact information in the case of a homeless child), and the name of the school the child is attending;
- (II) in the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child and the name of the school the child is attending;

- (III) a description of the nature of the problem of the child relating to such proposed initiation or change,<sup>1</sup> including facts relating to such problem; and
- (IV) 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). These pleading requirements help achieve fairness in the hearing process by ensuring that the District has received adequate notice of the factual allegations and been afforded an opportunity to resolve the identified problems.

In this case, the Plaintiffs have filed an Amended Complaint that alleges, in its entirety:

- The [District] predetermined and acted to change placement of [J.Z.J.] without parental consent[.]
- The [District] altered the [Individualized Education Program (“IEP”)] to support the [District]’s predetermination to place [J.Z.J.] in a more restricted environment[.]
- The [District] violated [J.Z.J.]’s access to [a free appropriate public education (“FAPE”)] through a pattern of removal by way of out-of-school suspensions with frequency in direct response to manifestation of [J.Z.J.]’s documented disabilities[.]
- The [District] has not identified how the proposed placement in the [Georgia Network of Educational and Therapeutic Supports (“GNETS”)] program is dissimilar to [J.Z.J.]’s current placement[.]

Amended Complaint, at 1. Regarding the relief sought, the Amended Complaint proposes that J.Z.J. be allowed to remain in his current placement. Id.

The Plaintiffs’ Amended Complaint does not meet the requirements of 20 U.S.C. §§ 1415(b)(6)(B) and (b)(7)(A). Although the Amended Complaint expresses a general dissatisfaction with J.Z.J.’s proposed educational placement, it does not describe the nature of J.Z.J.’s educational problem, articulate any facts relating to the problem, provide dates for any of

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<sup>1</sup> The “proposed initiation or change,” or refusal to initiate or change, must relate to the identification, evaluation, educational placement, or provision of a free appropriate public education to the child. 20 U.S.C. §§ 1415(b)(3), (b)(6)(A), (b)(7)(A); 34 C.F.R. §§ 300.503(a), 300.507(a), 300.508(b).

the alleged events, or identify any of the individuals involved. Accordingly, on or before **May 6, 2014**, the Plaintiffs are hereby **ORDERED** to further amend their Amended Complaint, as follows:

- (1) The Plaintiffs shall provide a description of J.Z.J.'s disabilities and the nature of his educational problem, including all relevant facts related to the problem, such as:
  - (a) the facts supporting the Plaintiffs' conclusion that the District predetermined J.Z.J.'s placement;
  - (b) an explanation of how the District altered J.Z.J.'s IEP;
  - (c) an explanation of how the proposed placement is more restrictive than J.Z.J.'s current placement or is otherwise improper under IDEA;
  - (d) the facts supporting the Plaintiffs' conclusion that the District failed to provide J.Z.J. with a FAPE;
  - (e) the facts supporting the Plaintiffs' conclusion that the District removed J.Z.J. from the classroom based on conduct that was a manifestation of his disabilities; and
  - (f) the reasons why the Plaintiffs believe J.Z.J.'s current placement is proper.
- (2) The Plaintiffs shall state with specificity, to the extent possible, the individuals involved and the dates and/or time frames relevant to the issues presented in the Amended Complaint.

**Should the Plaintiffs fail to file a timely Second Amended Complaint, this matter will be dismissed without prejudice.** 20 U.S.C. § 1415(b)(7)(B); 34 C.F.R. § 300.508(c). Any other aspects of the Amended Complaint that the District contends are insufficient, including the Plaintiffs' proposed resolution, are deemed sufficient.

Under IDEA, the timeline for the due process hearing recommences upon the filing of an Amended Complaint. 20 U.S.C. § 1415(c)(2)(E)(ii). Here, as the parties have already completed the IDEA-mandated resolution meeting, they are not required to participate in a second meeting.

However, the evidentiary hearing is currently scheduled for May 12 and 15, 2014, which does not allow sufficient time for the Plaintiffs to file a Second Amended Complaint and the parties to prepare for the hearing. The hearing is therefore continued and rescheduled as follows:

**DATES: MAY 19 AND 22, 2014**  
**TIME: 9:30 AM**  
**LOCATION: OFFICE OF STATE ADMINISTRATIVE HEARINGS**  
**230 PEACHTREE STREET, NW, SUITE 850**  
**ATLANTA, GEORGIA**

The deadlines contained in the Prehearing Order entered on April 3, 2014, are extended in accordance with the new hearing date. The parties shall comply with the requirements of Paragraph No. 4 on or before May 12, 2014, and with the requirements of Paragraph No. 6 on or before May 9, 2014.

**SO ORDERED, this 29<sup>th</sup> day of April, 2014.**

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**KRISTIN L. MILLER**  
**Administrative Law Judge**