BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ALVORD UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013030302 ORDER OF DETERMINATION OF SUFFICIENCY OF SECOND AMENDED DUE PROCESS COMPLAINT

On March 8, 2013, Parent on behalf of Student filed a due process hearing request[1] (complaint) with the Office of Administrative Hearings (OAH) naming the Alvord Unified School District (District).

The District timely filed a notice of insufficiency (NOI) as to Student's complaint, and on March 29, 2013, OAH issued an order finding Student's complaint insufficient and allowing Student 14 days leave to amend.

On April 2, 2013, Student filed an amended complaint. On April 5, 2013, District filed a timely NOI as to Student's amended complaint and on April 9, 2013, OAH issued an order finding Student's complaint insufficient, and allowing Student 14 days leave to amend.

On April 10, 2013, Student filed a second amended complaint. On April 18, 2013, District filed a timely NOI as to Student's second amended complaint. On April 18, 2013, Student filed opposition to District's NOI.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.[2] 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).

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[1] 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).

[2] 20 U.S.C. § 1415(b) & (c).

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.[3] These 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.[4]

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint."[5] The pleading requirements should be liberally construed in light of the broad remedial purposes of the Individuals with Disabilities Act (IDEA) and the relative informality of the due process hearings it authorizes.[6] Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.[7]

DISCUSSION

Student's original complaint alleged that Student's parents (Parents) revoked consent to his placement at one elementary school, after which the District offered an alternative placement that Parents also rejected. Student alleged that the District should thereafter have offered either a third placement or filed its own request for due process. The original complaint was found insufficient because it did not contain information regarding the reasons why Student claimed that the District failed to provide him with a FAPE.

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[3] 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

[4] See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

[5] Sen. Rep. No. 108-185, *supra*, at p. 34.

[6] *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.].

[7] 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).

Student's amended complaint failed to add factual information regarding how the District failed to meet its obligation to provide a FAPE to Student. Instead, it referenced an incident involving Student's sibling and allegedly false reports about the family to the California Department of Social Services, Child Protective Services (CPS) made by the District, which the amended complaint alleged constituted a "hostile environment," analogous to Student's family being bullied. The amended complaint was found insufficient because it did not contain information regarding the reasons why Student claimed that the District failed to provide Student with a FAPE.

Student's second amended complaint fails to add factual information regarding how the District failed to meet its obligation to provide a FAPE to Student. The second amended complaint summarizes Student's claim as "the parents are afraid for [Student] or his brother to be in Alvord schools, having a well-founded fear that District personnel will make frivolous CPS complaints – and who knows what else they might do next." The second amended complaint concludes that District has denied Student a FAPE by not offering an appropriate placement, impliedly outside of District, and is required to initiate its own due process hearing request to defend an in-District placement. District's alleged failure to file a due process request upon Parent's revocation of consent to services may constitute a technical, procedural violation of the Education Code, but Student's second amended complaint has failed to allege exactly how District deprived Student of a FAPE by not doing so.

Allegations that a teacher hit Student's sibling, or that Parent has been harassed by frivolous CPS reports, fall short of alleging that Student was exposed to a "hostile" atmosphere, let alone address how or why Student did not receive, or cannot receive, a FAPE under his current individualized education program (IEP). If District's conduct adversely impacted Student's educational program, or resulted in a failure to implement Student's IEP, Student must allege facts describing that conduct and how it deprived Student of a FAPE.

Student's second amended complaint seeks as proposed resolutions that the District (i) be ordered to file for due process, and (ii) provide compensatory services for Student's unidentified "loss of educational opportunity," none of which is well-defined.

Therefore, Student's amended complaint is insufficient because it fails to provide the District with the required notice of a description of the problem and the facts relating to the problem, or with a proposed resolution of the problem to the extent known and available to Student at the time of the filing of the amended complaint.

A parent who is not represented by an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint.[8] Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

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[8] Ed. Code, § 56505

ORDER

1. Student's second amended complaint is insufficiently pled under section Title 20 United States Code 1415(c)(2)(D).

2. Student shall be permitted to file a third amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).[9]

3. The third 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.

4. If Student fails to file a timely third amended complaint, the second amended complaint will be dismissed.

5. All dates previously set in this matter are vacated.

Dated: April 19, 2013

/s/
ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings

[9] The filing of an amended complaint will restart the applicable timelines for a due process hearing.