BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: STUDENT, v. DENAIR CHARTER ACADEMY, DENAIR UNIFIED SCHOOL DISTRICT AND STANISLAUS COUNTY SPECIAL EDUCAITON LOCAL PLAN AREA.	OAH Case No. 2015050731 ORDER OF DETERMINATION OF INSUFFICIENCY OF DUE PROCESS COMPLAINT

On May 11, 2015, Parent, on behalf of Student, filed a Due Process Hearing Request[1] (complaint) naming the Denair Charter Academy, Denair Unified School District and the Stanislaus County Special Education Local Plan Area.

On May 19, 2015, SELPA filed a Notice of Insufficiency as to Student's complaint. On May 22, 2015, Charter Academy and Denair Unified filed a joint NOI.[2] This order addresses both NOI's.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.[3] 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] The education agencies each filed motions to dismiss, which are addressed in a separate order.

[3] 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 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.[4] 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.[5]

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint."[6] 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.[7] Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.[8]

DISCUSSION

Student's complaint raises six issues for determination. Student's first issue contends that the education agencies failed to properly respond to Student's request for an independent educational evaluation. Student's second issue contends that the education agencies failed to implement portions of Student's individualized education program. Student's third issue contends that the education agencies failed to provide a complete assessment report with respect to a psycho-educational evaluation of Student. Student's fourth issue contends that the education agencies have failed to provide necessary and accurate information in the

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[4] 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

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

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

[7] *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.].

[8] 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).

development of Student's IEP. Student's fifth issue asserts that the education agencies failed to prevent retaliation against Parents for advocating on behalf of Student.[9] Finally, Student's sixth issue asserts that the education agencies failed to provide Student an auditory screening.

While Student has listed a set of problems as issues to be resolved, the complaint is lacking in details that would meet the minimal pleading requirements. It also does not specify whether a claim is raised against one education agency or against all. For example, Student contends an education agency did not comply with its responsibilities pertaining to independent education evaluations. However, Student fails to provide any date to identify when this happened; and fails to provide any facts as to what type of IEE was at issue. Similarly another claim contends that Student's IEP was not properly implemented. However, no facts are provided as to the date of the IEP or what parts of the IEP were not implemented. These are examples and are not meant as an exhaustive list of the details the complaint lacks.

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, Student has set out proposed resolutions that request compensatory education, an auditory screening and corrective action for the education agencies. The resolutions meet the minimal pleading requirements.

While Student's identification of specific problems puts the agencies on notice as to the legal issues raised in the complaint, the lack of details prevents the education agencies from sufficiently preparing a defense, and participating in a resolution session or mediation. Accordingly, Student's complaint is legally insufficient.

A parent or student who is not represented by an attorney may request that the Office of Administrative Hearings provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. (See Ed. Code, § 56505.) Parent is encouraged to contact OAH for assistance if she intends to amend the due process hearing request.

ORDER

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

2. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).[10] Student shall have 14 days from the date of this order to file her amended complaint.

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[9] This claim is raised pursuant to section 504 of the Rehabilitation Act of 1973. This order makes no findings on whether OAH has jurisdiction to determine this claim.

3. If Student fails to file a timely amended complaint, the complaint will be dismissed.

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

DATE: May 26, 2015

/S/

BOB N. VARMA
Division Presiding Administrative Law Judge
Office of Administrative Hearings

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