BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. HACIENDA LA PUENTE UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013051120 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On May 28, 2013 Parent on behalf of Student (Student) filed a Due Process Hearing Request[1] (complaint) naming the Hacienda La Puente Unified School District (District) as respondent.

On June 6, 2013, the District filed a Notice of Insufficiency (NOI) as to Student's complaint. The District contends that the complaint is insufficient as (1) it fails to specify and identify the issues and (2) fails to allege specific facts including dates to allow the District to be prepare a defense and participate in a resolution session or mediation.

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).

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

[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).

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 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 complaint is comprised of five paragraphs of facts and requests a resolution of Student being placed at an "appropriate nonpublic school, such as the Frostig School." The complaint fails to specify what issues are being asserted against the District. In paragraph one, Student states that Student was found eligible for special education under the category of emotional disturbance on May 9, 2013. In that paragraph, Student refers to the District failing to meet its child find obligations. The remainder of the four paragraphs avers facts which apparently occured during 2013, but there is no reference as to what issue these facts refer to.

It is unclear what claims are being alleged in the complaint in the last four paragraphs because Student has not specified any specific issues. Thus, the District, as well as OAH, are unsure of what claims Student is alleging. Thus, the complaint is not sufficient to permit the

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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).

District to prepare a defense or participate in both resolution and mediation as to what is issue is being alleged other than child find.

ORDER

1. Student's complaint is insufficiently pled under section Title 20 United States Code 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).[8]

3. The 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 amended complaint, the complaint will be dismissed.

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

Dated: June 07, 2013

/s/
ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings

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