BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. MERCED CITY ELEMENTARY SCHOOL DISTRICT and MERCED COUNTY OFFICE OF EDUCATION.	OAH Case No. 2015090062 ORDER DETERMINING STUDENT'S COMPLAINT TO BE INSUFFICIENT

On August 31, 2015, Student filed a Due Process Hearing Request[1] (complaint) naming the Merced City Elementary School District and the Merced County Office of Education (collectively referred to as "Districts").

On September 11, 2015, Districts timely filed a joint Notice of Insufficiency as to Student's complaint.

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).

The complaint is deemed sufficient unless a party notifies the Office of Administrative Hearings and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements.[3]

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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).

[3] 20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).

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 IDEA 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 contains seven issues, many of which include sub-issues. All of Student's issues are insufficiently pled.

In issue one, Student contends that information used by her individualized education program team in determining Student's classification was not accurate. Student contends that school staff and IEP team members excluded information from Student's records. However, Student fails to state what information in her records is inaccurate and what

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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).

information was excluded from her IEP process. Moreover, Student fails to state the dates when this allegedly occurred. Student also fails to state which of the two named school districts participated in the actions alleged in issue one. Finally, Student fails to state how the inaccurate and /or incomplete information resulted in the denial to her of a free appropriate public education by either of the named school districts. For these reasons, issue one is insufficient as presently pled.

In issue two, Student contends that she disagrees with Districts' identification, assessment, and placement of her. However, Student fails to state how Districts misidentified her, what the misidentification is, when it took place, and what her proper identification should be. Student fails to state what assessments she disagrees with, and when the assessments were conducted, why she disagrees with them. Student further fails to state what the placement is with which she disagrees, why she disagrees with it, when the placement offer was made, and what she believes her placement should be.

Student further contends in issue two that Districts demonstrated a lack of communication by improper notification of IEP team members, refusal to communicate with Student's grandparent and advocate, and failing to include an independent assessment report in Student's IEP records. However, Student fails to state to what notification she is referring, which IEP team members were not notified, when the notification was supposed to have taken place and in reference to what sort of meeting or activity, and how the alleged failure denied her a FAPE. Student fails to state when Districts failed to communicate with Student's grandparent and/or advocate, and in what context the failure to communicate occurred. Finally, Student fails to state what assessment was not included in her IEP records, when the assessment was done, when and if her grandparent and/or advocate requested it to be included in Student's records, and how the failure to include the report denied her a FAPE.

For these reasons, issue two is insufficient as pled.

In issue three, Student contends that school site staff members are attempting to separate her grandparent from Student's advocate by refusing to communicate with the advocate. Student also contends that school staff would not permit her grandparent or advocate access to her classroom. Student further contends that school staff members are engaging in reprisals against her grandparent, such as having Student ask her grandparent to sign her latest IEP document.

However, student fails to state when any of these alleged actions occurred, who allegedly committed them, and how the alleged actions denied Student a FAPE. For these reasons, issue three is insufficient as pled.

In issue four, Student contends that Districts are misusing the IEP process by using proprietary information of Student's advocate that is the advocate's intellectual property. However, Student fails to state what the intellectual property is or when and how Districts allegedly misappropriated it. Moreover, Student fails to state how any of these actions,

assuming they occurred, denied her a FAPE or if and how such actions would be a violation of the Individuals with Disabilities Education Act or California special education laws. For these reasons, issue four is insufficient as pled.

Student's issue five consists of the following: "Long standing school interaction problems; Child has not adjusted to school because of the accumulative effect of poor school experiences since kindergarten." This issue fails to include any specifics as to what the long-standing problems are, when they occurred and which, if any, of these problems may have occurred within the applicable two-year statute of limitations. Most significant, Student fails to give any facts as to how these problems may have resulted in Districts denying her a FAPE. For these reasons, issue five is insufficiently pled.

In issue six, Student makes another broad statement, alleging "Long standing concern with school failure." Again, Student fails to state what her concerns are, how Districts have failed her in her education, when the failures occurred and in relation to which of her IEP's, and how these failures may have denied her a FAPE. For these reasons, Student's issue six is insufficient as pled.

In issue seven, Student again makes a broad statement without supporting facts or relationship to any alleged denial of FAPE by Districts. Student's issue seven states only: "Long standing signs of neurological damage." Student, however, fails to state what type of damage she may be suffering, how it is manifesting itself at school, how it is affecting her ability to access her education, or how Districts were aware of the damage or should have been aware of it. Further, Student fails to state how she has been denied a FAPE due to her neurological damage. Student fails to state what Districts should have done differently in relation to her educational program and/or what she requires educationally because of the neurological damage. For these reasons, issue seven is insufficient as pled.

In conclusion, Student's seven issues are insufficiently pled because they fail to provide Districts with the required notice of a description of the problems and the facts relating to the problems. Without this information, Districts cannot meaningfully participate in the mediation process and cannot defend the allegations at hearing.

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).[9]

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

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.

DATE: September 15, 2015

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings