BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. HERMOSA BEACH CITY SCHOOL DISTRICT.	OAH CASE NO. 2013050552 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On May 14, 2013, Parent on behalf of Student (Student) filed a Due Process Hearing Request[1] (complaint) naming the Hermosa Beach City School District (District) as respondent.

On May 22, 2013, the District filed a Notice of Insufficiency (NOI) 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).

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

[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(b)(7)(A)(ii)(III) & (IV).

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

In its NOI, the District points out that the introductory portion of the complaint lists parents who differ from that listed under the section entitled "Student and Parents." The District also contends that it is unable to determine which issues are being alleged against it as the complaint lists differing issues in two places in the complaint. Although the complaint alleges procedural and substantive violations of the IDEA and failure to provide services called for in Student's IEP's, there is no mention of any IEP other than the April 13, 2012 IEP. Thus, the District contends that the complaint fails to provide it with sufficient information to respond to the complaint and participate in resolution session and mediation.

Student's complaint contains 25 pages which contain over 10 pages outlining Student's educational history. At pages two and three, Student outlines four proposed issues.[8] The first issue is whether the District provided Student with an appropriate placement, program and related services during school year 2011-2012. Issue two is whether

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[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).

[8] These issues are numbered. Issue two is mistakenly numbered as issue one.

the District provided Student with an appropriate placement, program, and related services during school year 2012-2013. The third issue is whether Student is entitled to an ongoing program to meet his unique and individual needs "as detailed in several assessments." Student's issue four is whether Student is entitled to intensive remedial services as compensatory education. On pages 16 to 18, Student alleges issue one as Problem Number One. In detailing this problem, Student also alleges procedural and substantive IDEA violations. Problem Number Two is set forth on pages 18 to 20 and also details procedural and substantive IDEA violations. Both Problems apparently involve substantive violations.

The actual issues being alleged are uncertain as there are differences between the Proposed Issues and the Problems alleged. Additionally, Student contends in his description of the Problems allegations concerning procedural defects which are not included in either the alleged issues or problems.

Student's complaint is insufficiently pled in that it fails to provide District with the required notice of what issues are being alleged against it, a description of the problem and the facts relating to the problem to permit the District on notice as to what the issues are and the factual basis for those issues. The complaint omits which IEP's are at issue and which services called for in the IEP's were not provided to Student.

Student should specifically reallege the issues and provide which specific IEP's are at issue and what services the District failed to provide.

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]

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.

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

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

Dated: May 22, 2013

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