BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. DAVIS JOINT UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013080810 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On August 22, 2013, Student's parents on behalf of Student (Student) filed a due process hearing request[1] (complaint) naming the Davis Joint Unified School District (District).

On September 6, 2013, the District filed a notice of insufficiency (NOI) as to Student's complaint. On September 6, 2013, Student filed a request that the District's NOI be disregarded because it was filed after the 15-day deadline. On September 9, 2013, the District filed a reply.

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

Student's complaint seems incomplete. It fails to provide the District with the required notice of a description of the problem and the facts relating to the problem. It contains only a bullet-point list of facts, a general statement that the District denied Student a FAPE, and a request for a remedy. It provides no information regarding which actions by the District resulted in a denial of FAPE, the time period during which those actions occurred, and why or in what way the actions led to the denial of FAPE.

Student contends that the District's NOI was not timely filed. That contention is not well taken. The District's NOI was filed on the 15th day after Student filed the complaint. The NOI is timely. (Ed. Code, § 56502, subd. (d)(1); see also Code Civ. Proc. § 12 [when computing time in which an act required by law is to be done, the first day is excluded].)

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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).

MEDIATOR ASSISTANCE FOR NON-REPRESENTED PARENTS: A parent who is not represented by an attorney may request that the Office of Administrative Hearings (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.

ORDER

1. Student's complaint is insufficiently pled under section 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).[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.

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

Dated: September 9, 2013

/s/
SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings

8 Ed. Code, § 56505.

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