BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. CENTINELA VALLEY UNION HIGH SCHOOL DISTRICT.	OAH CASE NO. 2013071018 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On July 23, 2013, Student filed a due process hearing request[1] (complaint) naming the Centinela Valley Union High School District (District).

On August 7, 2013, District filed a timely 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).

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 requirements prevent vague and confusing complaints, and promote fairness by providing the

[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).

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 Individuals with Disabilities Education Act (20 U.S.C. § 1400, et seq. (ISEA)) 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 alleges that Student is 18 years old, in high school, has behavior problems that interfere with his academic performance, and that Parent holds his educational rights. He alleges that from the 2008-2009 through 2012-2013 school years, Parent has complained to District about Student's poor academic performance and requested special education services, but District has failed to respond. He also alleges that District failed to respond to Parent's recent records request, and that Parent is unsure whether Student had an IEP in the past. Student claims that District denied him a FAPE by: (1) failing to meet its obligation to search out and serve students with special needs ("child find"), (2) failing to assess Student at Parent's request or to give Parent prior written notice of the reasons for refusing to assess, (3) failing to respond to a records request, and (4) denying Parent an opportunity to meaningfully participate in the IEP process by not providing translated documents. As remedies, Student seeks assessments, an IEP to review the assessments, mental health and behavior services, and compensatory education.

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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).

District contends that the facts alleged are insufficient to place it on notice of Student's claims, as it lacks details on when Parent spoke to District, what was said, to whom, and the dates the record requests were made. District also challenges whether Parent can hold Student's educational rights when Student is an adult.

For the most part, the facts alleged in Student's complaint are sufficient to put District on notice of the issues forming the basis of the complaint; Student's claims are based on District's alleged failure to respond to Parent's repeated requests for assessments and services. However, except for the recent records request, the time period of the complaint is generally alleged to extend over five years, from 2008 to 2013, and it is unclear if the alleged violations occurred five years ago, one year ago, or every year. The dates on which Student's claims arose are fundamental jurisdictional issues. Although Student need not allege the date of every conversation or encounter, he must at the very least specify the individual years (or academic school years) in which each alleged violation occurred.

The allegation of a recent records request suffices to provide a description of the nature of the problem and facts related to the problem, and the reference to two dates, 90 days apart, does not render the statement of the claim insufficient.

Student has adequately alleged that Parent holds educational rights. Whether or not Parent actually holds these rights is a matter for factual inquiry at hearing, and Parent will be required to prove standing in order to prevail on Student's claims.

Student's complaint is insufficiently pled as to the years in which the alleged violations of the IDEA occurred.

ORDER

1. Student's complaint is insufficiently pled under section Title 20 United States Code 1415(c)(2)(D), as to the years in which the alleged conduct occurred.

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.

Dated: August 09, 2013

/s/
ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings

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