BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. HEMET UNIFIED SCHOOL DISTRICT.	OAH Case No. 2015040133 ORDER REGARDING SUFFICIENCY OF DUE PROCESS COMPLAINT

On March 23, 2015, Student filed a due process hearing request (complaint) naming Hemet Unified School District as respondent.

On March 25, 2015, Hemet filed a Notice of Insufficiency (NOI) as to Student's complaint.[1]

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] The document was erroneously titled Notice of Representation rather than Notice of Insufficiency; however, the cover letter as well as the substantive document referred to it as a Notice of Insufficiency.

[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 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 pleads three issues in his complaint, one is sufficient and two are insufficient. The issues are discussed below.

In Issue 1, Student asserts that his mental health issues are keeping him from obtaining an education and as a result he is failing all of his classes. This issue contains sufficient information to put Hemet on notice that Student is asserting the need for services to address his mental health needs.

In Issue 2, Student asserts that he is frequently late to class, leaves class, goes to the office, or leaves campus without supervision. This issue does not contain sufficient information to put Hemet on notice as to how this issue relates to a proposed initiation or change concerning Student's identification, evaluation, or educational placement, or the provision of a free appropriate public education (FAPE) to Student.

In Issue 3, Student asserts that his parent receives telephone calls from Hemet Staff indicating that they cannot get Student to go to class or to stay in class. This issue does not contain sufficient information to put Hemet on notice as to how this issue relates to a

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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).

proposed initiation or change concerning Student's identification, evaluation, or educational placement, or the provision of a free appropriate public education (FAPE) to Student.

Parents who are 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. Issue 1 in Student's complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).

2. Issues 2 and 3 in Student's complaint are insufficiently pled under title 20 United States Code section 1415(c)(2)(D).

3. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).[9]

4. 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.

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issue 1 in Student's complaint.

DATE: April 7, 2015

/s/

JOY REDMON
Administrative Law Judge
Office of Administrative Hearings

8 Ed. Code, § 56505.

9 Filing an amended complaint will restart the applicable timelines for a due process hearing.