BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ALVORD UNIFIED SCHOOL DISTRICT & RIVERSIDE COUNTY OFFICE OF EDUCATION.	OAH CASE NO. 2013030373 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On March 9, 2013, Student filed a Request for Due Process Hearing (complaint) naming Alvord Unified School District (District) and Riverside County Office of Education (RCOE) as respondents.

On March 22, 2013, District and RCOE filed a response to Student's complaint and each timely filed a Notice of Insufficiency (NOI). Student filed opposition to the NOIs on March 25, 2013.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.[1] 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.[2] These requirements prevent vague and confusing complaints, and promote fairness by providing the

[1] 20 U.S.C. § 1415(b) & (c).

[2] 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.[3]

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint."[4] 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.[5] Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.[6]

DISCUSSION

Student alleges he was denied a FAPE because respondents failed to offer Student an appropriate placement or, alternatively, to file a request for due process pursuant to Education Code section 56346(f). Student contends respondents must either offer an appropriate placement or file a due process complaint because, under section 56346(f), "if the public agency determines that the proposed special education program component to which the parent does not consent is necessary to provide a free appropriate public education to the child, a due process hearing shall be initiated in accordance with Section 1415(f) of Title 20 of the United States Code." Related facts are alleged as follows: Student attended Collett Elementary School pursuant to an individualized education program (IEP). Parents later revoked consent to that placement because the placement was hostile and unsafe. The complaint describes a specific incident, occurring on October 30, 2012, involving a physical altercation in which Student hit his teacher and the teacher hit him back. District accepted Parents' revocation of their consent to placement at Collett Elementary School and offered Student placement in a mild to moderate special day class (SDC) offered by RCOE at Stokoe Elementary. Parents visited the SDC at Stokoe Elementary and determined it was not an appropriate placement for Student. Parents informed "officials" at Stokoe Elementary and

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[3] See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

[4] Sen. Rep. No. 108-185, *supra*, at p. 34.

[5] *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.].

[6] 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's Special Education Director of the reasons the placement was inappropriate. Respondents have since refused to offer any alternative placement and have not initiated a due process hearing. Student seeks an order compelling respondents to offer an appropriate placement or file a complaint to resolve whether the placement offered was appropriate.

The facts alleged in Student's complaint are sufficient to put the District on notice of the issues forming the basis of the complaint. Student's complaint identifies the issues and adequate related facts about the problem to permit District to respond to the complaint and participate in a resolution session and mediation. The IDEA requires only a "description of the nature of the problem" (20 U.S.C. (b)(7)(A)(ii)(III)), a requirement liberally construed in light of the remedial and informal nature of the due process proceedings. Therefore, Student's complaint is sufficient.

ORDER

1. The allegations in the complaint are sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: March 25, 2013

/s/
MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings