BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. FOUNTAIN VALLEY UNIFIED SCHOOL DISTRICT, KINETIC ACADEMY, AND EL DORADO SPECIAL EDUCATION LOCAL PLAN AREA.	OAH Case No. 2017090249 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On September 6, 2017, Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming Fountain Valley Unified School District, Kinetic Academy, and El Dorado Special Education Local Plan Area. On September 18, 2017, El Dorado filed a Notice of Insufficiency as to Student's complaint.[2]

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint. (20 U.S.C. § 1415(b) & (c).) 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 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. (20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).) These requirements prevent vague and confusing complaints, and promote fairness by providing the named parties with sufficient information

[1] A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 U.S.C. section 1415(b)(7)(A).

[2] El Dorado included in its NOI a motion to dismiss El Dorado as a party and a motion to dismiss issues outside of OAH's jurisdiction. Those motions are now moot. However, El Dorado is advised to separately file its motions in the future.

to know how to prepare for the hearing and how to participate in resolution sessions and mediation. (See H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.)

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint." (Sen. Rep. No. 108-185, *supra*, at p. 34.) 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. (*Alexandra R. ex rel. Burke v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, CIV. 06-CV-0215-JL) 2009 WL 2957991[nonpub. opn.]; *Escambia County Bd. 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, 8:04CV2657T24EAJ) 2005 WL 2850076 [nonpub. opn.]; but cf. *M.S.-G v. Lenape Regional High School Dist. Bd. of Educ.* (3d Cir. 2009) 306 Fed.Appx. 772, 775 [nonpub. opn.].) Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge. (*Assistance to States for the Educ. of Children with Disabilities & Preschool Grants for Children with Disabilities* (Aug. 14, 2006) 71 FR 46,540-46541, 46699.)

DISCUSSION

Student's complaint alleges four claims.[3] All four claims are insufficiently pled as to El Dorado only. Student alleges Fountain Valley, Kinetic Academy, and El Dorado violated child find, denied him FAPE by failing to offer and implement an individualized education program, and violated Section 504 of the Rehabilitation Act by failing to create a 504 Plan and failing to provide Student access to his education.

Although Student's complaint contains a description of the problem, facts related to the problem, and proposed resolutions, he does not allege how El Dorado is responsible for any of the violations. Student's only mention of El Dorado is to say Kinetic Academy is a part of the El Dorado Special Education Local Plan area, although Kinetic Academy is its own local education agency, and that El Dorado's parent procedural safeguards state it is responsible for oversight of Kinetic Academy and its special education programs. Student fails to allege if El Dorado participated in the identification, evaluation, educational placement, or offer of FAPE for Student. As such, Student's complaint is insufficiently pled as to El Dorado in that it fails to provide El Dorado with the required notice of a description of the problem and the facts relating to the problem as to how it is a responsible public agency or that it did anything that denied Student a FAPE.

[3] Student lists three claims in the issues presented section of his complaint, however, lists a fourth claim in the memorandum of points and authorities. For purposes of this order, Student's fourth claim is included.

ORDER

1. Student's complaint is insufficiently pled under section title 20 United States Code 1415(c)(2)(D) as to El Dorado.

2. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).[4]

3. The amended complaint shall comply with the requirements of title 20 U.S.C. 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, El Dorado will be dismissed as a party, and the matter proceed against Fountain Valley Unified School District and Kinetic Academy.

DATE: September 20, 2017

DocuSigned by:
Linda Johnson
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LINDA JOHNSON
Administrative Law Judge
Office of Administrative Hearings

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