BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LINCOLN UNIFIED SCHOOL DISTRICT & SAN JOAQUIN COUNTY OFFICE OF EDUCATION.	OAH CASE NO. 2013090535 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT; AND ORDER DISMISSING ISSUES

On September 16, 2013, Student filed a Due Process Hearing Request (complaint)[1] against the Lincoln Unified School District (District). On September 18, 2013, the District filed a Notice of Insufficiency (NOI) 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. (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

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[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).

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 Individuals with Disabilities Education Act (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] Based on the alleged facts in the complaint, and the supporting information provided regarding the issues discussed below, Student's complaint is found to be legally sufficient.

DISCUSSION

Student's complaint is presented in an array of documents, including: 1) the Office of Administrative Hearing (OAH)'s Mediation and Due Process Hearing Request Form (OAH Form 64), which included seven alleged issues; 2) seven pages of allegations (dated August 8, 2011) listing seven additional alleged issues; and 3) additional four pages of documents presenting 20 alleged issues earlier presented in OAH Case Number 2011090998.[7] Further, Student submitted with his complaint: a) a 21 page "amended & supplemented closing brief" that was earlier submitted by Student in OAH Case Number 2011090998; b) some documents relating to a US District Court case; and c) a declaration by Dr. Closson dated December 31, 2012 regarding the US District Court case. In all, the documents submitted by Student presented a total of 34 alleged issues, and all taken together present a very confusing

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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).

[7] OAH Case Number 2011090998 was heard and decided in a written decision issued on November 30, 2011.

picture. As a discussed in more details below, Student's complaint is found to be insufficiently pled.

The first 12 pages of Student's complaint contain 13 issues regarding alleged failures by District to provide Student with a FAPE. As to Issue 1, Student alleges that District denied him a FAPE because the District's Board (Board) changed Student's placement on July 21, 2011, without an individualized education program (IEP) team meeting, and because the San Joaquin County Office of Education (SCJOE) did not rule in favor of Student. In Issue 1, Student fails to allege sufficient facts about how the District denied him a FAPE either because the Board failed to hold an IEP team meeting, or because the SCJOE denied Student's expulsion appeals. The complaint does not contain sufficient or specific factual allegations relating to District or the alleged violation, and fails to describe how the District denied Student a FAPE. Thus, Student's Issue 1 is found to be insufficient.[8]

In Issue 2, Student alleges that, during the 2011-2012 school year (SY), he was denied "placement and program and services … due to a rehabilitation program" that the Board ordered. Here also, Student fails to state sufficient facts regarding how the action of the Board denied Student a FAPE, or what placement, program or services were denied to Student. Thus, Issue 2 is found insufficient.

In Issue 3, Student wrote "Child find issues. We requested [an] evaluation at Fresno [Diagnostics] and was denied." The complaint provides no additional facts, date or circumstances of the request, and thus fails to provide sufficient facts regarding this issue. As such, Issue 3 is not sufficiently pled.

In Issue 4, Student alleges that, from March 2011 to the present, "PLOP [were] not right for this Student …" As presented, Issue 5 is unclear. Further, no additional information was provided regarding this issue. Student fails to provide sufficient facts regarding Issue 4, and therefore, Issue 4 is not sufficient.

Student's Issue 5 alleges that, during the 2012-2013 SY, he was denied a FAPE because "did not provide [supports and services] to work with students with behavior or 26.5 services … from May 2011 to present." As presented, Issue 5 is confusing, and Student fails to state sufficient facts regarding this issue. Student fails to identify what supports or services Student needed that District failed to provide, thus, Issue5 is not insufficient.

In Issue 6 Student alleges that he was denied a FAPE from May 2011 through July 2011 because "District and SJOE had prior knowledge of concerns about LD [learning disability] and ED [emotional disturbance] since 2009" and that Parent's rights to participate in several IEP team meetings were violated. Here also, the complaint provides no additional

[8] Even if Issue 1 were to be found sufficient, it is unclear whether this issue could be brought for adjudication at this time due to the two-year statute of limitations.

facts in support of the allegations, and fails to state sufficient facts regarding this issue. Therefore, Issue 6 is insufficiently pled.

Student's Issues 7 through 13 are contained on pages 6 through 12 of the complaint. In Issue 7, Student alleges that he was discriminated against because a racially biased test was administered on him. Otherwise, Student made no allegation that he was denied a FAPE, or provided any specific and sufficient facts how such denial might have occurred. Therefore, Issue 7 is insufficiently pled.

In Issue 8, Student allegations offer some facts regarding an alleged omission by District in 2011. Student alleges that District failed to include emotional disturbance (ED) in Student's IEP. Otherwise, Student made no allegation that Student was denied a FAPE as a result of the omission, and fails to provide any sufficient facts as to how or when such denial might have occurred. Therefore, Issue 8 is insufficiently pled.

Student's Issue 9 alleges that Student was discriminated against because of his disability, because District failed to consider the effect of Student's use of an anti-depressant medication before Student was expelled in 2011. Again, here, Student makes no allegation that District denied Student a FAPE as result of the alleged failure by District. The complaint offers no facts sufficient to determine whether or how the alleged failure by District denied Student a FAPE. Therefore, Issue 9 is insufficiently pled.[9]

Issue 10 alleges that Student was discriminated against because District failed to consider information provided by Parent during Student's Manifestation Determination meeting/hearing in 2011. Again here, Student provided sufficient facts regarding a denial of FAPE and failed to allege sufficient facts how such denial might have occurred. Therefore, Issue 10 is insufficiently pled. [10]

Here also, Student's Issue 11 alleges discrimination by some administrative panel and District, but fails to allege that Student's rights under the IDEA were violated or how such violation occurred. This issue fails to allege that a denial of FAPE occurred, and fails to provide sufficient facts in support of the issue. Therefore, Issue 11 is insufficiently pled.[11]

Student's Issue 12 alleges that District's governing board denied Student's request for the postponement of a hearing on July 6, 2011. The complaint provides no sufficient

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[9] The question of whether Student was denied a FAPE as a result of his expulsion in 2011 was adjudicated in OAH Case Number 2011090998.

[10] See FN 9.

[11] See FN 9.

information about the hearing, or how Student's right to FAPE was denied as result of the denial of the request for postponement. Issue 12 is legally insufficient.

Student's Issue 13 indicated that Parent disagreed with some changes and recommendations contained in Student's behavioral support plan on or about April 7, 2011. However, like in other issues, the complaint provides insufficient facts in support of the issue, and fails to allege that a denial of FAPE occurred as a result of the alleged facts. As such, Issue 13 is insufficient.

Student's **Issues 14 through 33** are not new issues. These 20 issues were earlier presented *verbatim* in OAH Case Number 2011090998 filed on September 27, 2011. District challenged the sufficiency of these issues in that case, and in an "Order of Determination of Sufficiency of Due Process Hearing," issued by OAH on September 30, 2011, OAH found all of the 20 issues insufficiently pled.[12] The filing of the identical issues in a new case two years later amounts to a request to reconsider the original finding of insufficiency. Student has provided no new facts or law that would justify a reconsideration. Furthermore, Student has failed to provide any explanation as to why Student did not seek reconsideration in the original action or why Student waited two years to seek reconsideration. Finally, there is no new information provided with the 20 issues that would cure the insufficiency determined in the September 30, 2011 order. Accordingly, reconsideration is denied and these issues are dismissed with prejudice.

Overall, the complaint also fails to state any proposed resolution to the problems. Accordingly, Student's complaint is insufficiently pled as it fails to include adequate allegations to put the District on notice as to the basis of Student's claims and proposed resolutions to permit the District to respond to the complaint and participate in a resolution session and mediation.

Pursuant to Education Code section 56505, subdivision (e)(6), a parent who is not represented by an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. If Parent requests the assistance of a mediator, he should contact OAH immediately in writing.

ORDER

1. Student's Issues 1 through 13 are insufficiently pled under section title 20 United States Code 1415(c)(2)(D).

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[12] Nonetheless, OAH allowed the expedited review of the disputes regarding Student's manifestation hearing held on May 31, 2011. A decision was issued in that case on November 30, 2011.

2. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).[13]

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. Student's Issues 14 through 33 are dismissed with prejudice.

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

Dated: September 20, 2013

/s/
ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings

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