BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2013060562
v.	ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT AND ORDER DENYING MOTION TO DISMISS AS MOOT
SACRAMENTO CITY UNIFIED SCHOOL DISTRICT.	

On June 12, 2013, Parent on behalf of Student (Student) filed with the Office of Administrative Hearings (OAH) a Due Process Hearing Request[1] (complaint) naming the Sacramento City Unified School District (District). On June 19, 2013, Attorney Daniel Osher filed a Notice if Insufficiency (NOI) and a Motion to Dismiss on behalf of the District. On June 20, 2013, OAH granted in part the District's motion to dismiss as to Student's Issues Two through Five and found Student's remaining Issues One and Six to be insufficiently pled. Student was granted leave to file an amended complaint within fourteen days.

On July 19, 2013, Student filed an amended complaint. The District asserts that Student did not provide it with a copy of the amended complaint, but rather it received a translated copy of the amended complaint from OAH on July 23, 2013. On August 5, 2013, the District timely filed an NOI as to the amended complaint well as a Motion to Dismiss Issues One and Three.[2]

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.[3] The party filing the complaint is not entitled to a hearing

[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] The District's motion to dismiss is moot with the granting of this NOI.

[3] 20 U.S.C. § 1415(b) & (c).

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.[4] These requirements prevent vague and confusing complaints, and promote fairness by providing the named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.[5]

A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child."[6] The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.) This limited jurisdiction does not include jurisdiction over claims alleging a school district's failure to comply with a settlement agreement. (*Id.* at p. 1030.) More recently, in *Pedraza v. Alameda Unified Sch. Dist.* (D. Cal. 2007) 2007 U.S. Dist. LEXIS 26541, the United States District Court for the Northern District of California held that OAH has jurisdiction to adjudicate claims alleging denial of a FAPE as a result of a violation of a mediated settlement agreement, as opposed to "merely a breach" of the mediated settlement agreement that should be addressed by the California Department of Education's compliance complaint procedure.

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint."[7] The pleading requirements should be liberally construed in light of the broad remedial purposes of

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[4] 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

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

[6] 20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].

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

the Individuals with Disabilities Education Act (IDEA) and the relative informality of the due process hearings it authorizes.[8] Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.[9]

DISCUSSION

Student's complaint alleges three problems or issues which are all insufficiently pled as discussed herein. The complaint fails to provide essential facts as to the nature of the dispute that would provide the District with required notice and allow the District a fair opportunity to respond to the complaint, and participate in a resolution session and mediation. Student's complaint is legally insufficient.

In Issue One, Student refers to a settlement agreement with the District executed on September 7, 2011. He claims that the District deceived him and revised his original request that Student be placed in a lower grade level, and did not provide him with a translated Chinese version of the agreement until June 11, 2013. Student fails to provide any information as to whether the District violated a specific term of the settlement agreement, the nature of the violation, and how the alleged violation resulted in a denial of a FAPE. Further, although Student states that the District failed to provide him with an appropriate education from 2011 through 2013, he fails to provide any facts in support of this contention such as what Student required in order to receive a FAPE, what his IEP or what the settlement agreement called for to ensure the provision of a FAPE, and in what way the District failed to provide him with appropriate annual goals, placement, and/or related services. As indicated in the OAH order dated June 20, 2013, OAH does not have jurisdiction over problems about failure to comply with the terms of a settlement agreement, and additional facts are necessary to determine if Student's claim involves a FAPE issue or merely breach of an agreement. As it is, Issue One does not provide a sufficient description of the nature of the problem relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of Student, or the provision of a FAPE. Student's Issue one is legally insufficient.

In Issue Two, Student references deficiencies in Parent's participation in the IEP process, but fails to provide sufficient facts in support of his contention. Student alleges that

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[8] *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.].

[9] 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).

the IEP team refused to answer his question and then cancelled IEP team meetings in December 2013, January 2013, and Mach 1, 2013. Student does not indicate the purpose for these meetings, what question the team refused to answer, or how this refusal or the cancellation of IEP team meetings resulted in a denial of a FAPE. Student indicates he does not agree to any meeting conducted in his absence, but fails to specifically allege if and when an IEP team meeting occurred without him and any supporting details. Similarly, Student indicates as a proposed resolution that he be provided with an interpreter at the IEP team meetings and with translation of the IEP documents without specifically alleging if he has been denied such services, and at which meetings. Therefore, Student's Issue Two is legally insufficient.

In Issue Three, Student states that he wants the "best help possible" in the areas of one-on-one tutoring, speech and occupational therapy, and other services. Student does not provide any supporting facts as to whether the District has failed to provide him with required services, what services are required, which IEP's or which terms of the settlement agreement are at issue, and how the District's actions or inactions have denied him a FAPE. Student indicates he does not agree with promotion to the 7th grade given his below average performance but fails to specify what the District is offering in terms of an educational placement, what Student requires in order to receive educational benefit, or in what manner he has failed to make educational progress and how this results from the District's failure to provide him a FAPE. Student's Issue Three is legally insufficient.

For the reasons states above, Student's complaint is insufficiently pled in that it fails to provide the District with the required notice of a description of the problem and the facts relating to the problem. Because the complaint is insufficient on its face, the District's motion to dismiss Issues One and Three is moot.

A parent who is 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.[10] Parent is encouraged to contact OAH for assistance if he intends to amend Student's due process hearing request.

ORDER

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

10 Ed. Code, § 56505.

2. Student shall be permitted to file a second amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).[11]

3. The second 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 second amended complaint, the complaint will be dismissed.

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

6. The District's motion to dismiss is denied as moot.

Dated: August 7, 2013

/s/
THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings

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