BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: LEGAL GUARDIAN ON BEHALF OF STUDENT, v. WASHINGTON UNIFIED SCHOOL DISTRICT AND FRESNO COUNTY OFFICE OF EDUCATION (SELPA)	OAH CASE NO. 2013030656 AMENDED ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT[1]

BACKGROUND OF THE CASE

On March 15, 2013, Student, through her Grandmother, who is her legal guardian (referred to jointly here as "Student") filed a Due Process Hearing Request[2] (complaint) naming some 13 individuals who are alleged to be employed by the Washington Unified School District[3] (District) or the Fresno County Special Education Local Plan Area.

The complaint Student filed with the Office of Administrative Hearings (OAH) consists of 304 pages of documentation. The documents include tens, if not hundreds, of pages of emails between Grandmother and District staff, copies of individualized educational plans (IEP's), copies of assessment reports for Student, copies of a settlement agreement between the parties, dated August 29, 2012, which was intended to settle OAH case number 2012070092, which Student filed against the District in July, 2012. On approximately page 155, Student appears to include a motion for stay put.

On March 19, 2013, the District timely filed a Notice of Insufficiency (NOI) as to Student's complaint. The District states that it received three sets of documents by fax from Student, for a total of 123 pages. The District states that it cannot discern from the

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[1] Fresno County Office of Education (SELPA) was inadvertently left off the Order.

[2] 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).

[3] Student incorrectly identified the District as the Washington Union High School District.

documents what Student is alleging due to the confusing presentation of the documentation and the contradictory nature of many of the allegations. The District states that OAH informed it that the complaint filed with OAH totaled 304 pages, yet Student only served the District with 123 pages. Therefore, the District asserts that it was not served with a complete copy of the complaint and states that fact as another basis for its NOI.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.[4] 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.[5] 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.[6]

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 the IDEA and the relative informality of the due process hearings it authorizes.[8]

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[4] 20 U.S.C. § 1415(b) & (c).

[5] 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

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

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

[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.].

Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.[9]

DISCUSSION

In this case, Student's complaint is confusing and extremely difficult to follow. For example, Student has a section entitled "Statement of Reasons(s) for Request. In the first paragraph, Student appears to be alleging that the District violated the August 29, 2012 settlement agreement between the parties. In the next paragraphs, Student appears to be stating that the District has taken the position that Student and Grandmother no longer live within the boundaries of the District, but that the District was aware of this fact prior to entering into the August 29, 2012 settlement agreement. Student then has a paragraph describing why she believes she did not have an obligation to notify the District of her change of residency. Student then has a paragraph stating that the District is retaliating against Student and Grandmother because of complaints filed by them against the District. However, there is no description of what the District's retaliatory conduct was.

Student then includes several pages of emails between the parties. After the copies of the emails, Student includes a section entitled "Proposed Resolution for Each Problem/Complaint. In her first proposed resolution, Student asks that OAH compel the District to comply with the settlement agreement. In the numerous subsequent paragraphs of the proposed resolution section, Student then asks OAH to void the settlement between the parties and to permit Student to litigate the issues she had raised in OAH case number 2012070092.

Student's complaint is insufficient because it fails to provide the District with a concise statement of the issues in a coherent manner. It is impossible to determine what parts of the many pages of documentation are meant to be part of the complaint and which parts are supporting documentation. It is also difficult to determine if Student is attempting to allege the District failed to implement her IEP, has failed to implement the settlement agreement, or both.

Student's resolutions are equally unclear because she first requests OAH to order the District to comply with the settlement agreement and then, in the next paragraph, requests that OAH void the settlement agreement based on what appears to be an argument that the District induced Student to enter into the settlement agreement under fraudulent circumstances.

First, OAH does not have jurisdiction over claims alleging a school district's failure to comply with a settlement agreement. In *Pedraza v. Alameda Unified Sch. Dist.* (D. Cal.

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[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).

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 free appropriate public education 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, not by OAH, but by the California Department of Education's compliance complaint procedure.

This limited jurisdiction likewise does not include jurisdiction over claims alleging that a settlement agreement should be voided. OAH does not have the authority to void or modify the parties' agreement. (*Y.G. v. Riverside Unified Sch. Dist.* (C.D. Cal. 2011) 2011 WL 791331, *5.)

Therefore, OAH does not have jurisdiction over this case and cannot grant Student either of her stated remedies.

More important, Student's complaint does not set out her issues in any clear fashion, forcing the District to guess at where the complaint begins and ends, and where supporting documentation begins and ends. The complaint also fails to inform the District of what exactly the issues are for this due process hearing, and what issues are merely reiterations of complaints presented to other administrative bodies, such as the California Department of Education.

Further, since the District has only received approximately one third of the total pages Student filed with OAH, the District cannot be certain it was served with a complete complaint. Without knowing the extent of the allegations against it and without being able to understand the allegations, the District cannot adequately prepare a defense.

Therefore, Student's complaint is insufficient as presently alleged.

MEDIATOR ASSISTANCE FOR NON-REPRESENTED PARENTS

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] Student's legal guardian is encouraged to contact OAH for assistance if she intends to amend her due process hearing request.

ORDER

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

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10 Ed. Code, § 56505.

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

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. If Student's legal guardian wishes mediator assistance to file an amended complaint, she may contact OAH in Sacramento to make the request.

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

Dated: March 21, 2013

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings

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