BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. WINDSOR UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013030888 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On March 21, 2013, Parents on behalf of Student, through an advocate, filed a due process hearing request[1] (complaint) naming the Windsor Unified School District (District).

On April 2, 2013, District received a copy of the complaint and on April 9, 2013 filed a timely notice of insufficiency (NOI).

On April 10, 2013, Student filed a response to the NOI and an "addendum" to the 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.[3] These

[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).

[3] 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

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.[4]

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint."[5] 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.[6] Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.[7]

DISCUSSION

Student's complaint states that he is seven years old, with autism and a speech impairment. His complaint alleges one claim, categorized as a "civil rights violation at the least," that the District has refused to train staff to "handle" Student's licensed canine companion dog, resulting in the dog being in the back of the classroom, tied to the side of the playground, and the dog eating other students' food. The complaint also alleges that the District has not provided Student with home instruction despite Parents refusing to allow Student to attend school until the companion dog is trained, apparently by Parents and the aide. The complaint asserts that Student should be attending a general education classroom.

In response to the District's NOI, Student filed an "addendum" to his complaint, alleging for the first time that Student has an individualized education program (IEP) that calls for the companion dog to be with Student at all times, but that the District refused to allow Parents to train the aide to handle the companion dog in the classroom, and did not

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

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

[6] *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.].

[7] 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).

allow the dog on the school bus for a field trip. The addendum alleges that Student did not receive academic instruction, speech services, occupational therapy services (OT) while the parents kept Student home. The addendum proposes as a resolution that Mother be allowed in the classroom to train the aide to handle the companion dog, and that Student receive private tutoring.

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. It is unclear from the complaint how and whether Student contends that he was denied a FAPE by the District's refusal to train an aid to work with the companion dog. The addendum alleges, for the first time, that the IEP requires Student to have the companion dog present throughout the day, but also that Student's lack of services resulted from Parents' refusal to allow Student to attend school, rather than District's failure to implement the IEP. This lack of clear description of the problem and related facts renders the complaint insufficient.

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.[8] Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

8 Ed. Code, § 56505.

ORDER

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

2. Student shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).[9]

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. The amended pleading should be clearly entitled "amended due process hearing request," and all claims and resolutions must be included in one document. Further "addendums" will not be permitted.

4. If Student fails to file a timely amended complaint, the complaint will be dismissed.

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

Dated: April 10, 2013

/s/
ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings

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