BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Matter of: | |
| PARENT ON BEHALF OF STUDENT, | OAH CASE NO. 2013050162 |
| v. | ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT |
| POWAY UNIFIED SCHOOL DISTRICT. | |

On May 6, 2013, Parents on behalf of Student (Student) filed a Due Process Hearing Request[1] (complaint) naming Poway Unified School District (District).

On May 7, 2012, Justin R. Shinnefield, Attorney at Law, filed a Notice of Insufficiency (NOI) as to Student's complaint on behalf of District.

## 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 requirements prevent vague and confusing complaints, and promote fairness by providing the

[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).

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 Individuals with Disabilities Education Act, 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 is insufficiently pled. The complaint provides a narrative of various issue Parents have had with District, and includes a list of things Parents would like District to do.[8] On its face, Student's complaint appears to challenge some assessments by District. However, the complaint contains no specific allegation that a denial of FAPE occurred against Student. It makes no allegation that District denied Student a FAPE and fails to provide any sufficient facts regarding how or when such denial of FAPE might have occurred. In addition, it is unclear what issues or how many claims Student intended to allege in the complaint.

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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).

[8] For example, Parents believe that Student's assessment was rushed, and among other things, they would like District to do proper testing with accurate information, they would like to know how various alleged mix-ups occurred, and be assured that District would hold a proper individualized educational program meeting before the end of the school year.

Parents attached two "draft" assessment reports to the complaint. The Office of Administrative Hearings (OAH) considers the complaint on its face, and attachments are not considered in determining the sufficiency of the complaint. As discussed above, Student's complaint does not contain a description of the nature of the problem relating to a proposed initiation or change concerning the identification, evaluation, or educational placement of Student, or the provision of a FAPE to Student. The complaint fails to provide District with the required notice, a description of the problem, and the facts relating to the problem. Thus, it fails to provide District with an awareness or understanding of the issues forming the basis of the complaint, and as such, Student's complaint is insufficiently pled.

A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. While Student's complaint includes a list of things that Parents would like District to do, it is unclear whether the complaint contains a sufficiently identified resolution or desired remedy that could be ordered should a due process hearing be held. The complaint fails to meet the statutorily requirement that parties must state a resolution to the extent known and available to him/her at the time of the filing of the complaint, and as such, Student's complaint is found insufficiently pled for this reason also.

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

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).

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.[10]

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9 Ed. Code, § 56505.

10 To the extent that District request a dismissal due to insufficiency, such request is denied as moot. Student is granted leave to file a legally sufficient complaint within 14 days of this order.

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

5. If Student fails to file a timely amended complaint, the complaint will be dismissed.[11]

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

Dated: May 17, 2013

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

[11] Because Student is permitted to file an amended complaint, District's Motion to Dismiss Student's complaint on the basis of insufficiency is denied as moot. District may reintroduced it as a Motion to Dismiss, and OAH may dismiss Student's complaint on its own motion, if Student fails to file a complaint amended complaint within 14 days of the date of this order, as ordered herein.