BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. CHAFFEY JOINT UNION HIGH SCHOOL DISTRICT AND WALNUT UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013040302 ORDER OF DETERMINATION OF SUFFICIENCY OF AMENDED DUE PROCESS COMPLAINT AND REQUEST TO REISSUE SCHEDULING ORDER

On April 05, 2013, Parent on behalf of Student (Student) filed with the Office of Administrative Hearings (OAH) a Due Process Hearing Request[1] (complaint) naming the Chaffey Join t Union High School District(Chaffey) as respondent.

On May 28, 2013, Student filed with OAH a First Amended Complaint (FAC) naming Walnut Valley Unified School District (Walnut) and Chaffey as respondents. OAH deemed the filing as a request for leave to file an amended complaint. On May 30, 2013, a prehearing conference was held where Chaffey did not oppose Student's request for leave to file the FAC. Pursuant to the OAH order, Walnut was served with a copy of the FAC on June 12, 2013.

On June 13, 2013, Chaffey and Walnut jointly filed a Notice of Insufficiency (NOI) as to the FAC.

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

[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).

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 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

The facts alleged in the FAC are sufficient to put Chaffey and Walnut on notice of the issues forming the basis of the complaint. Student alleges facts which state that she began to attend school within the Walnut district starting with the 2012-2013 school year. The FAC also outlines when Student attended Chaffey schools. The FAC contains two issues. The first issue is that since August 2011, the respondents have failed to assess Student in all areas of suspected disability. The second issue is that since August 2011, the respondents have failed to design an educational program to meet Student's unique needs. The respondents contend that the FAC is uncertain in that Student refers to 'the District" in lieu of specifying what allegations are being made as to each individual respondent.

Since the FAC clearly states that prior to August 2011 Student was attending Chaffey schools and since the beginning of school year 2012-2013 attending school within Walnut, the respondents are on notice of the issues being alleged against each specific respondent. Thus, the

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

[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).

FAC adequately identifies the issues and related facts about the problem to permit respondents to respond to the complaint and participate in a resolution session and mediation.

Therefore, the FAC is sufficient.

The respondents also contend that the proposed resolutions are insufficient in that Student fails to specify what Student seeks as a resolution from each respondent. Respondents fail to present any authority which places such a pleading requirement on Student. A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (20 U.S.C. §1415(b)(7)(A)(ii)(IV).) Student has met the statutorily required standard of stating a resolution to the extent known and available to her at the time.

RESPONDENTS' MOTION TO REISSUE SCHEDULING ORDER

Student also moves for an order to reissue the scheduling order based on the date of service of the FAC. OAH issued a new scheduling order on May 30, 2013. Walnut was not formally served until June 12, 2013.[8] Thus, good cause exists that OAH issue a new scheduling order and that the timelines should be based on the day that Walnut was served.

ORDER

1. The FAC is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

2. Walnut's motion to reissue the scheduling order is granted and OAH will issue a new scheduling order based on June 12, 2013 as the date of filing.

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Dated: June 14, 2013

/s/
ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings

[8] After receiving the scheduling order dated May 30, 2013, Walnut requested a copy of the FAC from OAH, which provided only a copy of the original complaint. Student did not serve the FAC on Walnut until June 12, 2013.