BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
LEGAL GUARDIAN ON BEHALF OF STUDENT,	OAH CASE NO. 2013060983
v.	ORDER DETERMINING AMENDED COMPLAINT TO BE INSUFFICIENTLY PLED IN ITS ENTIRETY
GRAVENSTEIN UNION SCHOOL DISTRICT.	

On June 25, 2013, Advocate Myra Galt for Legal Guardian on behalf of Student (Student) filed with the Office of Administrative Hearings (OAH) a Due Process Hearing Request[1] (complaint) naming the Gravenstein Union School District (District). On June 26, 2013, Attorney Carl D. Corbin on behalf of the District timely filed a Notice of Insufficiency (NOI) as to Student's complaint.[2] In an order dated June 26, 2013, OAH found Student's complaint insufficient as pled but permitted Student to file an amended complaint. Student, through his advocate, timely filed his amended complaint on July 8, 2013.

As discussed below, Student's amended complaint fails to cure the deficiencies noted in his original complaint. Student's amended complaint is insufficient as pled.

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 unless the complaint meets the requirements of title 20 United States Code section 1415(b)(7)(A).

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[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 NOI was received shortly after 5:00 p.m. on June 25, 2013, and therefore is deemed filed the next business day.

[3] 20 U.S.C. § 1415(b) & (c).

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]

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint."[6] The pleading requirements should be liberally construed in light of the broad remedial purposes of the Individuals with Disabilities Education Act (IDEA) and the relative informality of the due process hearings it authorizes.[7] Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.[8]

DISCUSSION

Student's amended complaint is comprised of a letter to OAH from his advocate that contains a factual discussion as well as a list of three issues Student specifically raises for hearing. In the factual discussion, Student states that the District held an individualized education plan (IEP) meeting for him on June 4, 2013, at which time it was determined that Student's IEP from a prior school district needed to be reestablished. Student states that he has been diagnosed with attention deficit hyperactivity disorder and depressive disorder. Student states that the IEP from his prior school district had been discontinued. He further contends that actions of district staff following the discontinuation of the prior IEP created

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

[7] *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.].

[8] 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).

and caused behaviors for which Student was punished. Student further states that the District assessed him as requested by his legal guardian and held an IEP meeting to discuss the assessment. Student also states that his guardian had requested many of the items contained in an IEP developed for him, but despite promises from the District the items were never provided. Student contends that his guardian therefore does not believe that the District will provide him with the items now contained in his IEP.

After his recitation of these facts, Student raises three issues for hearing. He then includes a summary of issues, but his summary of issues does not comport with the original recitation of issues. In issue one of the amended complaint, Student contends that he has regressed during the 2012-2013 school year. He contends that the District made promises to provide him with remedies but failed to provide them as promised. Student further contends that his proposed school placement will continue under the same District supervision as before and that his guardian is afraid that he will regress. In his summary of issue one, Student states that he is being segregated from his classmates which has caused him embarrassment and depression.

The problem with Student's initial issue one and the summary of issue one is first that there is no correlation between the two. More importantly, Student provides no facts to support any of his allegations. He makes sweeping statements but offers no specifics. He does not state whether he had an IEP during the 2012-2013 school year and, if so, what his eligibility category is for purposes of special education. Student does not state what educational program and services he received during the 2012-2013 school year and why the program and services were not appropriate for him. Student does not state what the District should have offered him in place of the program and services that he appears to believe were inadequate. In sum, Student fails to give the necessary "who, what, where, when, why, or how" that would provide a basis for the District to understand the allegations against it and give it a basis for preparing to participate in a resolution session and mediation, as well as to enable it to present a defense at hearing.

In his long recitation portion of issue two, Student states that he was seated in the back of his class room all school year, which caused him anxiety. Student contends that his seating in the back of the classroom denied him a free appropriate public education (sometimes, FAPE) because it was done for punitive reasons. In his summary of issue 2, Student states that his has declined educationally and emotionally due to a lack of a free appropriate public education.

Student's issue two suffers from the same deficiencies as does his issue one. Student fails to state why he was placed in the back of the class, how his seating arrangement was punitive, why it denied him a FAPE, and why he needed to be seated in the front of the classroom. Student's summary of issue two fails to provide any indication of why Student believes he was denied a FAPE. There is simply insufficient information to provide a basis for Student's contention.

In issue three, Student contents that the District altered his report card after his June 4, 2013 IEP meeting when his guardian raised concerns about Student's seating in the classroom and academic regression. Student then repeats in issue three his allegations that he was improperly seated in the rear of the classroom. Student states that he felt on display because he is a minority student. In his summary of issue three, Student appears to state that the alternation of the report card consisted of deleting a reference that he was at risk of retention.

The principle problem with issue three is that it fails to state why the alleged alteration of Student's report card denied him a free appropriate public education or how the District's actions of altering his report card, if true, violated the Individuals with Disabilities Education Act, or state special education statutes.

As with his original complaint, Student's amended complaint does not contain sufficient facts regarding Student's eligibility for special education and related services, and whether and how the District has failed in its duties to provide any specified special education placement and services, and during which time period(s). Student fails to allege that he is eligible for special education and entitled to the provision of a FAPE or is currently being served under an IEP. Student does not indicate what his qualifying disability is, or whether there is a specific IEP that the District is not implementing or that Student is disputing. The amended complaint does not describe how the District's placement or services are insufficient, or negatively impact Student's ability to receive some educational benefit, or describe what type of services or instruction Student thinks he requires in order to access his educational program, which the District has failed to offer or provide.

Student's amended complaint raises general areas of concern, but fails to sufficiently allege a problem relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the Student, or the provision of a FAPE. Student does not provide sufficient essential facts as to the nature of the dispute that would provide the District with the required notice and allow the District a fair opportunity to respond to the complaint, participate in a resolution session and mediation, or present a defense at hearing. For these reasons, Student's amended complaint is insufficient in its entirety.

Therefore, Student's complaint, in its entirety, fails to describe a problem relating to the identification, evaluation or educational placement of the Student, or the provision of a FAPE under special education law and is legally insufficient.

MEDIATOR ASSISTANCE

In its Order dated June 26, 2013, finding Student's original complaint insufficient as pled, OAH informed Student and his legal guardian that 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] OAH informed Student and legal guardian that parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request. It does not appear that Student's legal guardian contacted OAH to request mediator assistance prior to filing Student's amended complaint. The Order below permits Student an opportunity to file a second amended complaint. Student's legal guardian is again encouraged to contact OAH for mediator assistance in identifying the issues for hearing if she chooses to file a second amended complaint.

ORDER

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

2. Student shall be permitted to file a second amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).[10]

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.[11]

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.

Dated: July 18, 2013

/s/
DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings

[9] Ed. Code, § 56505.

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

[11] Any amended complaint should consist of one inclusive document.