BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENTS ON BEHALF OF STUDENT,	OAH CASE NO. 2013010821
v.	ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT; ORDER DISMISSING ISSUE 13
RIALTO UNIFIED SCHOOL DISTRICT.	

On January 25, 2013, Student's parents on behalf of Student (Student) filed a due process hearing request[1] (complaint) naming the Rialto Unified School District (District). On March 6, 2013, Student filed an amended due process hearing request (amended complaint).

On March 20, 2013, the District filed a notice of insufficiency (NOI) as to certain issues in Student's amended complaint along with a motion to dismiss issues 12 and 13.

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 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 District challenges three issues of Student's amended complaint: issue eight (lack of parental participation); issue 12 (actions of District's counsel); and issue 13 (retaliation in violation of Section 504 of the Rehabilitation Act).

The District previously filed an NOI to Student's original complaint. Issue eight of that original complaint (which is identical to issue eight of the amended complaint) was previously found sufficient. The District's provides no reason to change that ruling.

Issue 12 was previously found insufficient. It is still insufficient, unclear and confusing. It appears that Student either filed the issue against District's counsel based on counsel's conduct (in which case the allegation would be outside the jurisdiction of the Office of Administrative Hearings) or alleges that the District violated special education law by hiring counsel. If it is the latter, Student alleges no authority to show that hiring counsel is a violation of special education law. Allegation 12 is insufficient as alleged. The finding of insufficiency of that issue makes the District's motion to dismiss that issue moot.

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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).

Allegation 13 alleges a violation of Section 504 of the Rehabilitation Act, which is beyond the jurisdiction of OAH. It is hereby dismissed from the action.

ORDER

1. Issue 12 of Student's complaint is insufficiently pled under Title 20 United States Code section 1415(c)(2)(D).

2. Issue 13 is dismissed from Student's amended complaint.

3. Student shall be permitted to file a second amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).[8]

4. 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.

5. If Student fails to file a timely second amended complaint, the hearing shall proceed on all remaining issues (besides Issues 12 and 13) in Student's amended complaint.

Dated: March 29, 2013

/s/
SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings

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