BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. BERKELEY UNIFIED SCHOOL DISTRICT AND EMERY UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2014011067 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On January 30, 2014, Parent on behalf of Student filed a due process hearing request[1] (complaint) naming the Berkeley Unified School District (Berkeley USD) and the Emery Unified School District (Emery USD)..

On February 12, 2014, Emery filed a notice of insufficiency (NOI) as to Student's 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 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

Student's complaint confusingly alleges that she received special education services "through" Berkeley USD and funded by Emery USD until April 2009, after which Student was "in" Berkeley USD. Student alleges that she attended various schools from September 2010 through February 2013, at which time she became homeless, but does not allege the school districts in which those schools were located. Student alleges that she was taken in by friends residing within Berkeley USD boundaries in June 2013, at which time Student enrolled in Berkeley USD. Student's complaint alleges two claims against unspecified "districts": that they (1) failed to offer Student a FAPE, and (2) failed to provide Parent with a complete copy of Student's educational records.

Student's complaint is insufficiently pled as to Emery USD, in that it fails to provide Emery USD with the required notice of a description of the problem and the facts relating to the problem. Student has failed to define the time periods for each claim, or to identify the school districts against whom the claims are made. In addition, on the facts alleged, Emery USD stopped providing Student with services almost five years ago, which is well outside

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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).

the two-year statute of limitations for violations of the Individuals with Disabilities Education Act (20 U.S.C. § 1400, et seq.). (See 20 U.S.C. § 1415(f)(3)(C), (D)).

Student's complaint fails to state sufficient facts supporting a claim against Emery USD, and the complaint is insufficient as to Emery USD.

ORDER

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

2. Student shall be permitted to file an amended complaint against Emery USD under Title 20 United States Code section 1415(c)(2)(E)(i)(II).[8]

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.

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 as against Emery USD.

DATE: February 18, 2014

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings

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