BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SAN LORENZO UNIFIED SCHOOL DISTRICT.	OAH Case No. 2015091001 ORDER: (1) FINDING COMPLAINT INSUFFICIENTLY PLED, (2) DENYING PREVIOUS REQUESTS FOR LEAVE TO AMEND, AND (3) DENYING DISTRICT'S MOTION TO DISMISS AS MOOT

On September 24, 2015, Advocate on behalf of Student filed a due process hearing request[1] (complaint) naming San Lorenzo Unified School District, dated September 20, 2015.

On September 24, 2015, Advocate on behalf of Student also filed another complaint against District dated September 23, 2015.

On September 28, 2015, Advocate on behalf of Student filed another complaint against District dated September 20, 2015, that included exhibits.

On October 5, 2015, District timely filed a notice of insufficiency and motion to dismiss as to Student's September 20, 2015 complaint only.

This order will treat District's notice of insufficiency as addressing Student's *first* complaint dated September 20, 2015. This order will also address Student's other complaints as requests for leave to amend. District's motion to dismiss will be denied as moot.

APPLICABLE LAW

Notice of Insufficiency

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

[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).

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 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]

Requests for Leave to Amend

An amended complaint may be filed when either (a) the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or (b) the hearing officer grants permission, provided the hearing officer may grant such permission at any time more than five (5) days prior to the due process hearing. (20 U.S.C.

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[2] 20 U.S.C. § 1415(b) & (c).

[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).

§1415(c)(2)(E)(i).) The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).)

DISCUSSION

Notice of Insufficiency

Student's first complaint dated September 20, 2015, alleges that District has failed to implement Student's individualized education plan or provide him with on-on-one instruction since Fall 2013, resulting in a lack of progress, failing grades and lost credits. The complaint also alleges that Student has ADHD and post-traumatic stress disorder, and that District's failure to follow Student's behavior plan on June 4, 2015, resulted in an altercation between Student and school security and Student's incarceration in Juvenile Hall. As a resolution, Student seeks that District staff are informed of his IEP and trained on implementing his IEP and behavior support plan, that he is evaluated for unmet educational needs, awarded additional school credits, insulated from further contact with specified school security staff and re-enrolled in District rather than remaining incarcerated as Parent did not consent to Student's removal from school. Student also requests "reinstatement" of his emotional disturbance.

Student fails to identify the IEPs in dispute, how District failed to implement them, or when the request for one-on-one assistance was made. It is unclear from the complaint if Student was disenrolled before or after his incarceration, and whether or not Student was deprived of, or seeks to appeal, a manifestation determination review prior to disenrollment. The complaint also makes reference to events scheduled to occur after the complaint was filed.

Student's complaint is insufficiently pled in that it fails to provide District with the required notice of a description of the problem and the facts relating to the problem.

Requests for Leave to Amend

Student's *first* complaint dated September 20, 2015 was filed with a complaint dated September 23, 2015 attached, resulting in inevitable confusion as to which document Student sought to have as the operable complaint. Student's *second* complaint dated September 20, 2015 made reference to post-September 23, 2015 events, resulting in confusion over why that document had been back-dated. These subsequently filed documents are treated as requests by Student for leave to amend.

Multiple filings of various complaints with the same dates makes reference to the correct document very difficult, and renders tracking the documents virtually impossible. For that reason, Student's requests for leave to amend are denied.

If Student wishes to pursue his claims, Student may draft ***one document*** that states all of his claims, with dates and facts to the extent possible. That document should be clearly dated as of ***the date it is filed***, that is, the date that it is served on OAH by mail or fax.

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

ORDER

1. Student's *first* complaint dated September 20, 2015 is insufficiently pled under section Title 20 United States Code 1415(c)(2)(D).

2. Leave to amend Student's complaint, by filing a complaint dated September 23, 2015 or a *second* complaint dated September 20, 2015, is denied.

3. Student shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).[9]

4. 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. Student shall make sure that the amended complaint has the ***correct date*** on the first page.

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

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

6. District's motion to dismiss is denied as moot.

DATE: October 8, 2015

/S/
ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings

[8] Ed. Code, § 56505.

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