BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. BREA ORLINDA UNIFIED SCHOOL DISTRICT; NORTHEAST ORANGE COUNTY SELPA; PLACENTIA-YORBA LINDA UNIFIED SCHOOL DISTRICT; and ORANGE COUNTY DEPARTMENT OF EDUCATION.	OAH Case No. 2015120595 ORDER DETERMINING COMPLAINT INSUFFICIENT AS TO ORANGE COUNTY DEPARTMENT OF EDUCATION

On December 11, 2015, Parents on behalf of Student filed a Due Process Hearing Request[1] (complaint) naming the Brea Orlinda Unified School District, the Northeast Orange County Special Education Local Plan Area, and the Orange County Department of Education (Orange County). On December 30, 2015, the Office of Administrative Hearings issued an order finding the complaint insufficient as to Orange County.

Student filed an amended complaint on January 5, 2016, naming the Brea Orlinda Unified School District, the Northeast Orange County Special Education Local Plan Area, the Placentia Yorba Linda Unified School District, and the Orange County Department of Education. On January 20, 2016, Orange County timely filed a notice of insufficiency as to Student's amended complaint.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint. (20 U.S.C. § 1415(b) & (c).) 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).

The complaint is deemed sufficient unless a party notifies OAH and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has

[1] A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 U.S.C. section 1415(b)(7)(A).

not met the notice requirements. (20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).)

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 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. (20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).) 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. (See H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.)

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint." (Sen. Rep. No. 108-185, *supra*, at p. 34.) 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. (*Alexandra R. ex rel. Burke v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, CIV. 06-CV-0215-JL) 2009 WL 2957991[nonpub. opn.]; *Escambia County Bd. 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, 8:04CV2657T24EAJ) 2005 WL 2850076 [nonpub. opn.]; but cf. *M.S.-G v. Lenape Regional High School Dist. Bd. of Educ.* (3d Cir. 2009) 306 Fed.Appx. 772, 775 [nonpub. opn.].) Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge. (*Assistance to States for the Educ. of Children with Disabilities & Preschool Grants for Children with Disabilities* (Aug. 14, 2006) 71 FR 46,540-46541, 46699.)

DISCUSSION

OAH found Student's initial complaint insufficient as to Orange County because it failed to contain specific allegations connecting Orange County to the alleged denial of a free appropriate public education to Student. Student's amended complaint does not remedy the lack of specificity and therefore is also insufficient as to Orange County.

Student's complaint names Orange County as a respondent in issues two, four, and five.[2] In issue two, Student contends that all respondents denied him a FAPE by failing to develop an appropriate individualized education program for him during the two years prior to the filing of Student's original complaint on December 11, 2015. Student contends that his IEP's failed to include appropriate goals and services that would address his needs in

[2] In issues one and three, Student only names "District," which he defines as Brea Orlinda Unified School District on page three of his complaint, as having committed the violations alleged in those paragraphs, rather than the plural "respondents."

speech and language; assistive technology and alternative communication; fine and gross motor skills; sensory integration; cognitive development; behavior; vision and visual processing; adaptive living skills; and recreational therapy. Student also contends that respondents collectively failed to provide him with a safe learning environment and failed to properly supervise staff.

However, Student does not state any facts in the course of his 50 page complaint connecting Orange County to his IEP process. There are no facts stating that Orange County was involved in Student's IEP process or should have been involved in that process. There are no facts stating that Orange County provided education and services to Student or should have provided education and services to him. The only facts concerning Orange County are that in September 2015, almost two years after the beginning of the statute of limitations period, Brea Orlinda was unable to contract with the non-public school Student was attending through a settlement agreement between Parents and Brea Orlinda because the non-public school's rates were higher than those permitted by Orange County. Issue two is therefore insufficient as to Orange County as presently stated.

In issue four, Student contends that respondents collectively denied him a FAPE when they failed to consider and provide a means for him to develop functional communication. There are no facts connecting Orange County to Student's IEP process, or to the education and services provided in Student's IEP's during the two years prior to the filing of his complaint. There are no facts tying Orange County's decision on what rate to pay to a non-public school to the allegation that Student was not provided with a means to develop functional communication. For these reasons, issue four is insufficient as presently stated.

In issue five, Student contends that respondents collectively denied him a FAPE because they failed to provide him with meaningful access to typical peers in a general education environment. Student does not state any facts to indicate that Orange County was involved with the development of his IEP's or should have been involved in their development, or how Orange County limited Student's access to typical peers. It is unclear from Student's complaint how Orange County's limitations on the amount of money it would pay to a non-public school on behalf of school districts under its jurisdiction somehow impacted Student's access to typical peers. For these reasons, issue five is insufficient as stated.

ORDER

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

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

3. The amended complaint shall comply with the requirements of title 20 U.S.C. 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 as to Orange County, and the complaint will proceed only as to the remaining parties.

DATE: January 22, 2016

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

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