BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. DELTA CHARTER HIGH SCHOOL, NEW JERUSALEM SCHOOL DISTRICT AND SAN JOAQUIN COUNTY OFFICE OF EDUCATION.	OAH Case No. 2015090690 ORDER GRANTING DELTA CHARTER HIGH SCHOOL'S NOTICE OF INSUFFICIENCY OF THE DUE PROCESS COMPLAINT

On September 8, 2015 Parent on behalf of Student filed with the Office of Administrative Hearings a pro se Due Process Hearing Request[1] (complaint) naming Delta Charter High School.[2] The complaint is long-running with approximately ten pages of detailed facts and contentions.

On September 17, 2015, Delta filed with OAH a Notice of Insufficiency (NOI) as to Student's complaint contending that the complaint "fails to include sufficient facts relating to the purported problem stated to establish a legal or factual issue with clarity for resolution in this forum." Delta also contends that the proposed resolutions are unclear "such that [Delta] is unable to determine if the relief is warranted.

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] In the NOI, the respondent identifies itself as Delta Charter School.

[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 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 complaint fails to allege any specific claim against Delta; and thus, fails to give a description of the nature of the problem being alleged. The long-running complaint contains many incidents and general allegations but fails to clearly state what issues Student is alleging. Because Student has failed to enumerate each issue being alleged, it is difficult, and almost impossible, to discern what claims are being raised.

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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).

Student's complaint is insufficiently pled in that it fails to provide Delta with the required notice of a description of the problem and the facts relating to the problem. It is unclear if Student is alleging that both the October/November 2014 and the September 8, 2015 manifestation hearings were inappropriate and why; whether Student is alleging that he was denied a free appropriate education because the IEP for school years 2014-2015 and 2015-2016 were not appropriately being implemented and why; and what other allegations are being raised.

Student should list the specific allegation (i.e., Delta failed to follow proper procedures at the September 8, 2015 Manifestation Hearing) and then list in what ways that Delta failed to follow proper procedures. This must be done for each specific issue Student raises.

Delta also contends that the proposed resolutions are unclear. Student's proposed resolutions requests are clear and understandable. Delta's challenge is not as to whether the proposed resolutions are understandable, but as to whether or not OAH may grant the requested remedies. A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (20 U.S.C. Section 1415(b)(7)(A)(ii)(IV).) The proposed resolutions stated in Student's complaint are well-defined. Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

MEDIATOR ASSISTANCE FOR NON-REPRESENTED PARENTS: A parent who is not represented by an attorney may request that the Office of Administrative Hearings provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. [9] Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

ORDER

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

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

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9 Ed. Code, § 56505.

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

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.

DATE: September 18, 2015

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings