BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. COTATI-ROHNERT PARK UNIFIED SCHOOL DISTRICT.	OAH Case No. 2014120010 ORDER DETERMINING STUDENT'S COMPLAINT TO BE INSUFFICIENT

On November 19, 2014, Parents on behalf of Student (Student) filed a Due Process Hearing Request[1] (complaint) naming the Cotati-Rohnert Park Unified School District (District).

On November 18, 2014, District timely filed a filed a Notice of Insufficiency (NOI) as to Student's complaint.[2]

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).

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

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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] District filed its NOI a day before the Office of Administrative Hearings received Student's complaint.

[3] 20 U.S.C. § 1415(b) & (c).

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 alleges six problems, which are all insufficiently pled. In Problem One, Student alleges that someone named Diane Ashton lied to his parents in order to get them to sign Student's IEP's and that she never gave Parents enough time to think about the IEP before asking them to sign it. However, Student does not state what lies Ms. Ashton told Parents or when they occurred. Student does not state how these lies prevented Student from receiving a free appropriate public education or prevented Parents from participating in the process to develop Student's IEP's. Then, as a proposed resolution, Student lists examples of information District never provided to Parents. Student does not state why he was denied a FAPE because this information was not provided to Parents. Additionally, it is unclear whether these contentions are a continuation of Problem One.

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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).

In either case, Student has failed to clearly state the resolution he is seeking for Problem One because the language of Problem One flows into Problem Two. In Problem Two, Student requests placement at a school called ANOVA. Student also states that a secretary at the Superintendent's office threatened to call the police on Parents, but does not state when that occurred, what the circumstances were, or why this alleged threat denied him a FAPE or prevented Parents from participating in the process to develop Student's IEP's. Additionally, Student's resolution to Problem Two is not intelligible.

In Problem Three, Student states that District is not making it easy for Parents to work with District. Student fails to state what District is doing, when it occurred, or how District's actions denied him a FAPE or prevented Parents from participating in Student's IEP process. Student also states that he has been affected by these problems, but does not state how he has been affected. For these reasons, Problem Three is insufficient as written.

In Problem Four, Student states that District has harassed him. Student states that as a result, he is not growing, his speech has been affected, he is running away, and is putting himself in danger. Student fails to state how District has harassed him, when the harassment occurred, or how the harassment prevented him from receiving a FAPE. Student also fails to state what he means by his statement that he is "not growing," how his speech has been affected, whether he is running away from home or school or both, how many times he has run away, and when all of this occurred. For all these reasons, Problem Four is not sufficiently pled.

In Problem Five, Student states that he falsely received a truancy letter. He does not state when he received it or why his receipt of the letter denied him a FAPE. There are several other statements in Problem Five, but they are unintelligible. For these reasons, Problem Five is not sufficiently pled.

In Problem Six, Student states that Parents are ready to file a lawsuit for harassment against District. However, Student does not make any specific claims or allegations in this issue other than that statement. Problem Six is therefore insufficient in its entirety.

For all these reasons, Student's complaint is insufficiently pled in its entirety because it fails to provide District with the required notice of a description of the problem and the facts relating to the problem in order to be able to participate in resolution or mediation sessions, or present a defense at hearing.

MEDIATOR ASSISTANCE FOR NON-REPRESENTED PARENTS

A parent who is not represented by an attorney may request that the Office of Administrative Hearings (OAH) 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]

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 Parents wish the assistance of an OAH mediator to help them identify their issues, they should immediately contact OAH.

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

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

DATE: December 3, 2014

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

9 Ed. Code, § 56505.

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