BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SACRAMENTO CITY UNIFIED SCHOOL DISTRICT.	OAH Case No. 2014030365 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On March 10, 2014, Parent on behalf of Student (Student) filed a Due Process Hearing Request (complaint) naming the Sacramento City Unified School District (Sacramento).

On March 17, 2014, Daniel A. Osher, Attorney at Law, timely filed a Notice of Insufficiency (NOI) as to Student's complaint on behalf of Sacramento.

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).

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. (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.[1]

[1] 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."[2] The pleading requirements should be liberally construed in light of the broad remedial purposes of the Individuals with Disabilities Education Act, and the relative informality of the due process hearings it authorizes.[3] Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.[4]

DISCUSSION

Student's complaint is insufficiently pled. The complaint contains three issues relating to alleged bullying of Student by another student, "child endangerment," and discrimination against Student by Sacramento. In support of the issues, Student submitted seven pages of various email communication between her Parent and Sacramento. On its face, Student's complaint does not contain a description of the nature of the problem relating to a proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a FAPE to Student. The complaint made no that Sacramento denied her a FAPE and fails to provide any fact or sufficient facts regarding how or when such denial of FAPE might have occurred. While Student attached seven pages of email communication between her Parent and Sacramento relating to the alleged issues, the Office of Administrative Hearings (OAH) considers the complaint on its face, and attachments are not considered in determining the sufficiency of the complaint.

The complaint fails to provide Sacramento with the required notice regarding the description of the problem, or the facts relating to the problem. The complaint fails to provide Sacramento with an awareness or understanding of the issues forming the basis of the complaint, and as such, Student's complaint is insufficiently pled.

Finally, a complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. Student's complaint includes a list of

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[2] Sen. Rep. No. 108-185, *supra*, at p. 34.

[3] *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.].

[4] 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).

requests, and thus meets the statutorily requirement that parties must state a resolution to the extent known and available to him/her at the time of the filing of the complaint.

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. (Ed. Code, § 56505.) Parent is encouraged to contact OAH for assistance if she intends to amend the 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). 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.

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

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: March 18, 2014

/s/
ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings