BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. JUNCTION ELEMENTARY SCHOOL DISTRICT, COLUMBIA ELEMENTARY SCHOOL DISTRICT, CHRYSALIS CHARTER SCHOOL, AND NORTH COW CREEK SCHOOL DISTRICT.	OAH CASE NO. 2012110685 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On April 4, 2013, the Office of Administrative Hearings (OAH) granted Student's request to file an amended Due Process Hearing Request[1] (amended complaint) naming Junction Elementary School District (Junction), Columbia Elementary School District (Columbia), Chrysalis Charter School (Chrysalis), and North Cow Creek School District (North Cow Creek).[2]

On April 19, 2013, Junction filed a Notice of Insufficiency (NOI) as to Student's amended complaint. Columbia filed a response to the complaint, but nothing else. The other parties to the action have not responded or filed their own NOI's.

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] Student's original complaint was filed on November 21, 2012, and only named Junction.

[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

The amended complaint was reviewed by the undersigned ALJ in it's entirety to determine its sufficiency. The amended complaint contains multiple sections, with a separate section pertaining to each party. Each section lists issues and sub-issues applicable to that party. Junction challenges the sufficiency of the complaint as to sub-issues 3(1)e and 3(2)d, which pertain only to Junction. In sub-issue 3(1)e, Student contends that Junction created a "hostile education environment." In sub-issue 3(2)d, Student contends that the Junction retaliated against Student and his family because they asserted their rights pursuant to the IDEA. Junction does not challenge any other claims in the amended complaint. In its NOI,

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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).

Junction asserts that the challenged sub-issues are "vague, conclusory, and are not supported by specific facts in the complaint."

In his complaint, following a statement of issues and sub-issues pertaining to each party, Student has a section entitled "Facts Pertaining to the Problem" (Facts) which contains separate numbered paragraphs that seem to detail the facts in support of each issue and sub-issue. In the Facts section of the complaint concerning Junction, Student recites a series of events that led to the filing of the original complaint. In paragraph 21 of this section, Student claims that "[s]ince the filing for due process, [Junction] has engaged in retaliation against [Student] and his parents." In support of this statement, Student claims that the District filed a complaint about the family with Children's Protective Services (CPS). He claims that staff have "harassed and punished" Student. Further, Student alleges that teachers have "taunted him about the due process hearing, and singled him out for ridicule during class." No other facts are stated that support Student's allegations that Junction has created a "hostile education environment," or engaged in acts of retaliation, and as a result denied Student a FAPE.

With the exception of the allegation of the filing of a complaint with CPS, there are no detailed facts in the complaint that would enable Junction to prepare for the hearing, participate in resolution sessions, and engage in meaningful mediation in regards to sub-issues 3(1)e and 3(2)d. Student attends middle school and has multiple teachers in multiple classes. Because no specific facts have been alleged as to which staff engaged in the alleged acts, what those specific acts were, and when the events occurred, Junction has not been given adequate notice of the facts pertaining to sub-issues 3(1)e and 3(2)d. Accordingly, these sub-issues have not been sufficiently pled, and will be dismissed. All other issues and sub-issues are sufficiently pled as to Junction with the required notice of a description of the problem and the facts relating to the problem.

ORDER

1. Sub-issues 3)(1)e, and 3(2)d of Student's amended complaint are insufficiently pled under Title 20 United States Code section 1415(c)(2)(D). All remaining issues and sub-issues are sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

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

3. The second 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.

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

4. If Student fails to file a timely second amended complaint, the hearing shall proceed on the remaining issues and sub-issues in Student's amended complaint.

Dated: April 23, 2013

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings