BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. PERRIS UNION HIGH SCHOOL DISTRICT.	OAH CASE NO. 2013030616 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On March 15, 2013 Student filed a Due Process Hearing Request[1] (complaint) naming Perris union High School District (District).

On March 22, 2013, District filed a Notice of Insufficiency (NOI) as to Student's complaint.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.[2] 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.[3] These requirements prevent vague and confusing complaints, and promote fairness by providing the

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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] 20 U.S.C. § 1415(b) & (c).

[3] 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.[4]

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint."[5] The pleading requirements should be liberally construed in light of the broad remedial purposes of the Individuals with Disabilities Education Act (IDEA) and the relative informality of the due process hearings it authorizes.[6] Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.[7]

DISCUSSION

Student's complaint alleges four claims in the complaint, all of which are insufficient. The issues are discussed below.

Issue one reads, as pled : "In September 2012 my son had an IEP at Val Verde School. On 3/5/2013 another one was [sic] schedule @ 8:30 a.m. to discuss my son's behavior. On 3/4/2013 my son was dismissed from this school and Mr. Flowers [sic] principle stated to find him a school and an IEP will be initiated after 3 weeks once my son is in school." This issue does not have sufficient information for the District to be able to participate in resolution session and mediation, and to prepare for hearing. It is unclear if Student has been removed from school due to his behavior. If Student has been removed from school for his behavior, Student may be entitled to an expedited hearing. Student should be clear about what violations he is alleging and clarify the reasons behind the school change, to the best of his knowledge. Student should clarify what he means by "dismissed," i.e. whether Student has been asked to leave informally, suspended or expelled.

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[4] See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

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

[6] *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.].

[7] 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).

Issue two reads, as pled: "On 3/6/2013 I went to Perris School District and paperwork was generated to process in what school he was to go. Special Ed Director took two weeks to approve paperwork & cleared my son to attend Heritage H.S." This issue does not have sufficient information for the District to be able to participate in resolution session and mediation, and to prepare for hearing. Student should clarify what violations he is alleging in this issue (i.e. whether the District made a placement decision outside the IEP process, whether the delay was a violation etc.).

Issue three reads, as pled: "On 3/12/2013 I went to Heritage and counselor received my son but in passing [sic]Asst. Principle made an inappropriate remark regarding my son 'This is not the right setting for my son' very judgmental didn't even have conversation with Mr. Rabing." This issue is not sufficiently pled. This issue does not have sufficient information for the District to be able to participate in resolution session and mediation, and to prepare for hearing. It is unclear what violation(s) are being alleged. If there is an allegation that the placement at Heritage is not appropriate for Student, this should be pled more clearly.

Issue four reads, as pled: "On 3/12/2013 I emailed principle Ms. Julie Zierold that her employees made comments about my son, and they stoled [sic] his social security card when I came to pick up clerk lost his card. Ms. Zierold disregarded my concerns and emailed stated find a school for my son no assistance from her or school." This issue does not have sufficient information for the District to be able to participate in resolution session and mediation, and to prepare for hearing. The issue fails to state a violation concerning how the missing social security card affected Student's ability to receive a FAPE. As to the allegation regarding finding another school, if Student chooses to file an amended complaint, Student should reframe this issue and plead facts regarding the issue of Student's placement at Heritage. For example, did Heritage dis-enroll Student or have Student's right to a FAPE been otherwise affected at Heritage?

Student also fails to list any proposed resolutions in the complaint. 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. §1415(b)(7)(A)(ii)(IV).) If Student chooses to file an amended complaint, Student should set forth proposed resolutions, to the best of Student's knowledge. Proposed resolutions are a statement of what Student believes is necessary to resolve the dispute.

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. [8] **Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.**

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8 Ed. Code, § 56505.

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).[9]

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.

Dated: March 25, 2013

/s/
MARGARET BROUSSARD
Administrative Law Judge
Office of Administrative Hearings

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