BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SAN DIEGUITO UNION HIGH SCHOOL DISTRICT.	OAH CASE NO. 2013090062 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On August 27, 2013 Student filed a Due Process Hearing Request[1] (complaint) naming District as the respondent. On September 6, 2013, District filed a Notice of Insufficiency (NOI) as to the complaint. On September 11, 2013, Student filed a response to the NOI. As discussed below, the NOI is granted. Student will be given the opportunity to re-file an amended complaint, and is encouraged to contact Office of Administrative Hearings (OAH) to obtain mediator assistance in drafting it.

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

[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).

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.[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 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 numerous issues. The issues appear to relate to a prior settlement agreement between Student and District, alleged noncompliance with its terms, and denials of a free appropriate public education (FAPE) arising out of failure to hold a timely individualized education program (IEP) meeting, failure to maintain appropriate Student educational records, and failure to properly schedule and conduct assessments in April 2013. Other issues are also stated in the complaint regarding alleged denials of the right to participate in IEP meetings. However, the claims are stated repetitively throughout the complaint, are restated several times adding additional allegations, are not numbered, and are disorganized, which makes it difficult or impossible to determine the exact number of issues and their exact content.

Thus, Student's complaint is insufficiently pled in that it fails to provide District with the required notice of a description of the problem and the facts relating to the problem.

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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).

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. [8] 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).[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: September 11, 2013

/s/
JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings

8 Ed. Code, § 56505.

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