BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. STOCKTON UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013050798 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On May 21, 2013, Parent on behalf of Student filed a due process hearing request[1] (complaint) naming the Stockton Unified School District (District).

On May 31, 2013, District filed a notice of insufficiency (NOI) as to Issue 3 of 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

[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 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 that despite reports to District of Student's low academic scores, depression resulting from bullying at school, bulimia and excessive absences, and despite Parent's request that Student be assessed for special education in April 2012, District failed to assess Student and find him eligible for special education as a child with serious emotional disturbance. Student's complaint claims that since May 24, 2011, Student has been denied a FAPE because (1) he was not found eligible for special education, (2) he was not timely assessed, and (3) the District allowed Student to be bullied at school. District contends in its NOI that without specific facts about the manner, means and places of the alleged bullying and reports, it cannot determine how these incidents denied Student a FAPE and prepare its defense.

The facts in Issue 3 of Student's complaint are sufficient to put District on notice of the issues forming the basis of that claim. Student alleges that "[a]s early as 2009, [Student's] records document that he suffered from clinical depression and bullying. That same year, the District granted [Student] a hardship transfer because he was the victim of homophobic bullying," "[s]chool records note that [Student] suffered bullying in school,"

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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).

"[Student] and [Parent] repeatedly informed the District about [Student's]... fears associated with school problems such as bullying," "[o]n April 25, 2012, [Parent] requested a special education assessment of her son....and requested that the District '[r]eview all school and counseling records related to [Student's] history of being bullied,'" and that the bullying and harassment experienced at school "exacerbated [Student's] condition of emotional disturbance so much so that he is unable to attend classes regularly....District has been aware of these incidents...[but] failed to take action to address and prevent the bullying.... result[ing] in the District's denying [Student] a FAPE." Detailed information on each incident and report, and how bullying impacted Student's access to a FAPE, is a matter for proof at trial and not necessary to give District notice of Student's claim. Student's complaint identifies the issues and adequate related facts about the problem to permit District to respond to Issue 3 of the complaint and participate in a resolution session and mediation.

Therefore, Student's statement of Issue 3 is sufficient.

ORDER

1. The complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: June 03, 2013

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings