BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: LEGAL GUARDIAN ON BEHALF OF STUDENT, v. GRAVENSTEIN UNION SCHOOL DISTRICT.	OAH CASE NO. 2013060983 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On June 25, 2013, Advocate Myra Galt for Legal Guardian on behalf of Student (Student) filed with the Office of Administrative Hearings (OAH) a Due Process Hearing Request[1] (complaint) naming the Gravenstein Union School District (District).

On June 26, 2013, Attorney Carl D. Corbin on behalf of the District timely filed a Notice of Insufficiency (NOI) as to Student's complaint.[2]

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).

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

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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] The District's NOI was received shortly after 5:00 p.m. on June 25, 2013, and therefore is deemed filed the next business day.

[3] 20 U.S.C. § 1415(b) & (c).

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 Individuals with Disabilities Education Act (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

Student's complaint is comprised of a letter to OAH from his advocate as well as the OAH Request for Mediation and Due Process Hearing form with attachments of unsigned report card notes and an email from guardian to advocate. What can be gathered from the entirety of Student's complaint is that he will be entering the sixth grade in the fall of 2013, and that, sometime prior to the second semester of his fifth grade year, the District exited him from special education. Student alleges that the District convened an individualized education program (IEP) team meeting on June 4, 2013, wherein the team determined his prior IEP, which had been discontinued, needed to be reinstated.

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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).

Student's complaint raises general areas of concern, but fails to sufficiently allege a problem relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the Student, or the provision of a FAPE. Student does not provide sufficient essential facts as to the nature of the dispute that would provide the District with the required notice and allow the District a fair opportunity to respond to the complaint, and participate in a resolution session and mediation.

In summary, the complaint alleges the following: the District improperly altered Student's report card after the June 4, 2013 team meeting; the 2012-2013 school year was traumatic and difficult for Student and the District failed to provide unspecified requested services; Student was required to sit in the back of the classroom segregated from his peers; the District failed to grade a book report, placed Student in a class with several substitutes, and sent Student to the office without informing the guardian; the District failed to complete a student study team form and meeting, failed to provide a second set of text books, failed to implement an end of the day system to confirm that Student had the necessary materials, and refused to send the guardian a request for assessment form. Student does not set forth how the District's alleged failures involve a violation of the IDEA, which deals with special education law. Student's proposed resolution is placement at New Horizon School, a nonpublic school, for the 2013-2014 school year

The complaint is devoid of facts regarding Student's eligibility for special education and related services, and whether and how the District has failed in its duties to provide any specified special education placement and services, and during which time period(s). Student fails to allege that he is eligible for special education and entitled to the provision of a FAPE or is currently being served under an IEP. Student does not indicate what his qualifying disability is, or whether there is a specific IEP that the District is not implementing or that Student is disputing. The complaint does not describe how the District's placement or services are insufficient, or negatively impact Student's ability to receive some educational benefit, or describe what type of services or instruction Student thinks he requires in order to access his educational program, which the District has failed to offer or provide.

Therefore, Student's complaint, in its entirety, fails to describe a problem relating to the identification, evaluation or educational placement of the Student, or the provision of a FAPE under special education law and is legally insufficient.

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

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[9] Ed. Code, § 56505.

ORDER

1. Student's complaint is insufficiently pled under title 20 United States Code section 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).[10]

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.[11]

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: June 26, 2013

/s/
THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings

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

[11] Any amended complaint should consist of one inclusive document.