BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. NORWALK-LA MIRADA UNIFIED SCHOOL DISTRICT & ABC UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2014010898 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On January 17, 2014, Parent on behalf of Student (Student) filed a due process hearing request[1] (complaint) naming the ABC Unified School District (ABC) and the Norwalk-La Mirada Unified School District (District). By order dated February 6, 2014, Student's complaint was found insufficient as to ABC.

On February 7, 2014, 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).

The complaint is deemed sufficient unless a party notifies the Office of Administrative Hearings (OAH) and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements.[3]

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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(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).

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 Individuals with Disabilities Education Act (20 U.S.C. § 1400, et seq. (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 filed the complaint on January 17, 2014, but did not file a proof of service showing whether or when the document was served on District. Normally, a district must file a notice of insufficiency within 15 days of receiving the due process request.[9] In this

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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).

[9] 20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).

case, it appears that the District did not have notice of Student's filing until OAH sent a scheduling order to the District on January 28, 2014. Therefore, the NOI was timely filed.

Student's complaint does not sufficiently allege any facts regarding the District. Although Student's complaint alleges an unsuccessful parental request for amendment of Student's individualized education program (IEP), it is unclear which of Student's allegations pertain to each of the two school districts named in the complaint. The complaint does not provide Student's address, or identify the school district(s) of attendance or dates of attendance. It is also unclear exactly what the basis for Student's complaint is and what proposed remedy Student wishes to obtain at the hearing. Student's parent will have to amend the complaint before this matter can proceed to hearing.

A "Mediation and Due Process Hearing Request Form" is available on the OAH, Special Education Division, website.[10] The information requested in that form, and the instructions provided on the form, may assist Parent in sufficiently stating the information that she contends will support a claim against the District.

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.[11] Parent is encouraged to contact OAH for assistance if she intends to amend her due process hearing request.

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10 http://www.dgs.ca.gov/oah/SpecialEducation.aspx

11 Ed. Code, § 56505.

ORDER

1. Student's complaint is insufficiently pled under section Title 20 United States Code section 1415(c)(2)(D) as to the Norwalk-La Mirada Unified School District.

2. Student shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).[12]

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 as to the Norwalk-La Mirada Unified School District.

5. All dates previously set in this matter are vacated as to the Norwalk-La Mirada Unified School District.

DATE: February 10, 2014

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings

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