BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. MANTECA UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013080296 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On August 07, 2013 Student's parent on behalf of Student (Student) filed a Due Process Hearing Request[1] (complaint) naming the Manteca Unified School District (District) as respondent.

On August 9, 2013, the 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

[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 form complaint contains five issues or complaints. Issue one alleges that Student has been denied a free appropriate public education (FAPE). In the resolution section, Student requests that the District "be ordered to find a least restrictive environment so that Student can receive special education and related services." Issue two alleges that Children's Home of Stockton[8] be deemed an unsuitable placement. In issue three, Student requests that Options in Education, Inc.[9] also be deemed an unsuitable placement for Student. In issue four, Student alleges that a District employee, Roger Goatche, violated certain section of the California criminal code. In the resolution section, Student requests that the individual's employment be terminated. In issue five, Student merely refers to Student's response to a due process request filed by the District in OAH Case Number 2013050805.

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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) 20 Roger Goat05 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).

[8] Children's Home of Stockton is a nonpublic school (NPS).

[9] Options in Education, Inc. is also a NPS.

The District contends that Student's complaint is not sufficient on grounds that it fails to include any description of the problems alleges, such as in what manner has the Student was denied a FAPE or why either of the NPS's are unsuitable. The District also contends that issues three is beyond the jurisdiction of OAH while Student has failed to allege any claim in issue five.

Student's complaint alleges five claims in the complaint, which are all insufficiently pled as discussed below. 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.

With respect to the first issue, Student needs to specify in what manner Student has been denied a FAPE. Student should also refer in what manner the proposed placement deprives Student of being in the least restrictive environment.

With respect to issues two and three, Student needs to state the reasons why either of the two NPS's is "unsuitable."

As to issue four, Student requests OAH to determine whether a District employee is in violation of criminal laws and to order that individual's dismissal. This is beyond the jurisdiction of OAH which is limited to issues under the Individuals with Disabilities Education Act (IDEA) Thus, this issue is not sufficient.

Issue five fails to allege any issue other than refer to another pleading filed in a related case.

MEDIATOR ASSISTANCE FOR NON-REPRESENTED PARENTS: 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 [10]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).

10 Ed. Code, § 56505.

2. Student shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).[11]

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: August 13, 2013

/s/
ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings

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