BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2013030302
v.	ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT
ALVORD UNIFIED SCHOOL DISTRICT.	

PROCEDURAL BACKGROUND

On March 8, 2013, Student, through his Mother, filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings (OAH) naming the Alvord Unified School District (District).

On March 18, 2013, Student's advocate filed a notice of representation on behalf of Student and his family. In his notice of representation, Student's advocate informed OAH that he did not properly serve the District until March 18, 2013, and requested that OAH reset the timelines in this case. In response to Student's request, OAH issued an amended scheduling order on March 22, 2013.

The District timely filed a Notice of Insufficiency (NOI) as to Student's complaint on March 29, 2013.

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).

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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).

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 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 contains a paragraph describing his issue and then a statement of facts. However, the issue and the factual background do not coincide and it therefore unclear if the information contained in the statement of facts is meant as additional issues or just intended as background information.

In his issue, Student states that his parents revoked consent to his placement at one elementary school after which the District offered an alternative placement at a different elementary school across the street from Student's home. Student states that the alternative

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[3] 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

[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).

placement would not work for him. He alleges that the District should thereafter have either offer yet another placement or filed its own request for due process.

Student's complaint however does not contain any more information regarding the reasons why he believes that the District has violated his rights under the Individuals with Disabilities Education Act or how the District specifically failed to provide him with a FAPE. Student's complaint does not state that Student has an individualized education plan (IEP) and, if so, what the date of the last signed and implemented IEP is. Student does not state when his parents revoked consent to his initial placement and when the District offered the alternative placement. Most importantly, Student fails to state what placement and services he requires in order to receive a FAPE. He also fails to state why the District's proposed alternative placement fails to meet his needs and why it "would not work." Finally, as stated above, it is unclear whether Student intends the allegations in his statement of facts to be incorporated as issues for determination at a due process hearing.

Student states in his complaint that his parents explained to various District staff members the reasons his parents believe the alternative placement is inappropriate. However, although Student's parents may have orally explained those reasons to the District, they are still required to include the specifics in their complaint. The complaint is the official document which supports a due process filing and puts both the District and OAH on notice of the issues Student wishes to present for hearing.

Therefore, Student's complaint is insufficient as presently plead because it fails to provide the District with the required notice of a description of the problem and the facts relating to the problem.

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).[8]

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.

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

5. All dates previously set in this matter are vacated.

Dated: March 29, 2013

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings