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.	

On March 8, 2013, Parent on behalf of Student filed a due process hearing request[1] (complaint) with the Office of Administrative Hearings (OAH) naming the Alvord Unified School District (District).

The District timely filed a notice of insufficiency (NOI) as to Student's complaint, and on March 29, 2013, OAH issued an order finding Student's complaint insufficient and allowing Student 14 days leave to amend.

On April 2, 2013, Student filed an amended complaint.

On April 5, 2013, District filed a timely NOI as to Student's amended complaint. On April 5, 2013, Student filed an opposition.

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

[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).

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 Individuals with Disabilities Act (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 original complaint alleged that Student's parents (Parents) revoked consent to his placement at one elementary school, after which the District offered an alternative placement that Parents also rejected. Student alleged that the District should thereafter have offered either a third placement or filed its own request for due process. The original complaint was found insufficient because it did not contain information regarding the reasons why Student claimed that the District failed to provide him with a FAPE.

Student's amended complaint fails to add factual information regarding how the District failed to meet its obligation to provide a FAPE to Student, instead stating that because of an alleged hitting incident involving Student's sibling and the sibling's teacher, and a series of "retaliatory" California Department of Social Services, Child Protective Services (CPS) complaints filed by the District against Parents (the content and results of

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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).

which are not alleged), Parents fear that Student "would be afraid to be [at the alternate placement] and that it would be a hostile environment." The amended complaint cites to a New York state court case that purportedly held that incidents of bullying may create a hostile and unsafe environment that denies a child a FAPE. The amended complaint also states, and Student argues in its opposition to District's NOI, that District was required upon Parents' revocation of consent to placement to offer Student another alternative placement or initiate due process, which the District did not do.

Although Education Code, section 56346(f) requires that, once a parent refuses consent to services, "if the public agency determines that the proposed special education program component to which the parent does not consent is necessary to provide a free appropriate public education to the child, a due process hearing shall be initiated," the failure to initiate such a proceeding constitutes a procedural violation. In the event of a procedural violation, a denial of FAPE may only be found if that procedural violation impeded the child's right to a FAPE, significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of a FAPE, or caused deprivation of educational benefits. (Ed. Code, § 56505, subd. (f)(2).) Student's amended complaint alleges a procedural violation, but not an underlying denial of a FAPE.

Student's amended complaint does not contain a description of the nature of the problem regarding the offer of placement, or any facts relating to that problem. Student does not allege that he has an individualized education plan (IEP), and if so, how the services described in that IEP cannot be implemented at the offered or alternate placements. Student fails to state what placement or services he requires in order to receive a FAPE, but were not offered or implemented. Student fails to state how an incident involving his sibling, or the CPS complaints, constituted bullying of Student or created an unsafe or hostile environment for Student. Student fails to state how the alternate placement "would not work." Student's amended complaint also seeks as proposed resolutions OAH orders that the District be (i) required to file for due process, (ii) required to "work with the parents to develop a mutually agreeable resolution," or (iii) provide compensatory services for Student's unidentified "loss of educational opportunity," none of which is well-defined.

Therefore, Student's amended complaint is insufficient because it fails to provide the District with the required notice of a description of the problem and the facts relating to the problem, or with a proposed resolution of the problem to the extent known and available to Student at the time of the filing of the amended complaint.

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

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8 Ed. Code, § 56505

ORDER

1. Student's amended complaint is insufficiently pled under section Title 20 United States Code 1415(c)(2)(D).

2. Student shall be permitted to file a second amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).[9]

3. The second 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 second amended complaint, the amended complaint will be dismissed.

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

Dated: April 09, 2013

/s/
ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings

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