BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. WINTERS JOINT UNIFIED SCHOOL DISTRICT AND DAVIS JOINT UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2015080259 ORDER OF DETERMINATION OF INSUFFICIENCY OF DUE PROCESS COMPLAINT

On July 31, 2015, Parent on behalf of Student (Student) filed a request for due process hearing (complaint) naming Winters Joint Unified School District and Davis Joint Unified School District.

On August 14, 2015, Winters filed a Notice of Insufficiency as to Student's complaint. Neither Student nor Davis filed an opposition or response to this Notice of Insufficiency.[1]

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

[1] On August 7, 2015, Davis filed a motion to be dismissed from this matter, which is moot as Student's complaint is found to be insufficient as to both Davis and Winters. Davis may refile its motion if Davis is named as a party in the amended complaint.

[2] 20 U.S.C. § 1415(b) & (c).

public education 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 Individuals with Disabilities Education Act 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

A school district is entitled to know the basis of each claim and the nature of the specific allegations being made against it, with respect to each issue or problem, so that the school district may be able to prepare a response, prepare for a resolution meeting, or prepare a defense for hearing.

Student's complaint alleges 15 claims in the complaint, all of which are insufficient to put Winters on notice of the issues forming the basis of the complaint against it. The issues are individually discussed below.

---

[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).

Student contends his individualized education programs for his 2012-2013 kindergarten school year, his 2013-2014 first grade school year, and his 2014-2015 second grade school year were inadequate. Initially, it is noted that Student resides within the Winters school district, but attended St. James School, a private school, in the Davis school district, and had an individual service plan for speech and language services.

In Issue One, Student contends during Student's kindergarten year, Davis failed to properly assess Student and make placement recommendations. Student fails to state the date of the assessment and/or assessment report in question; which assessments were questioned, and why; and/or what areas of suspected disability were not assessed. Further, Student has presented no information regarding an offer or placement, or why Student disagreed with any offer, if made. Therefore, Student has failed to state sufficient facts supporting Issue One, and the claim is insufficient.

In Issue Two, Student contends during Student's kindergarten year, his February 13, 2013 IEP failed to provide the necessary components of an appropriate IEP, as it did not include goals, objectives and appropriate objective criteria. Student fails to state which school district held the IEP team meeting and made an IEP offer of placement and services to Student. Student also fails to identify the components of the IEP that are allegedly inappropriate, and give reasons why the IEP is inappropriate. Therefore, Student has failed to state sufficient facts supporting Issue Two, and the claim is insufficient.

In Issue Three, Student contends Davis failed to include and provide goals and objective criteria, and failed to measure Student's progress in his "IEP/ISP" for speech and language services during kindergarten. Student fails to identify whether Davis provided an IEP or an ISP[8]; what specifically Davis failed to do, and why it was inappropriate. Therefore, Student has failed to state sufficient facts supporting Issue Three, and the claim is insufficient.

In Issue Four, Student contends during his first grade year, the February 13, 2014 IEP failed to make appropriate placement recommendations in the least restrictive environment. Student fails to identify which school district held the IEP team meeting, and made an offer of placement and services. Student fails to identify what the responsible district offered and why it was inappropriate, and why it was not Student's least restrictive environment. Therefore, Student has failed to state sufficient facts supporting Issue Four, and the claim is insufficient.

---

[8] As a student of Saint James, a private school, Student is in a category of pupils known as "private school children with disabilities" which refers to children with disabilities enrolled by parents in private schools or facilities. (Ed. Code, § 56170.) The basic rule for such pupils is that "No parentally placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school." (34 C.F.R. § 300.137(a)(2006); see also 20 U.S.C. § 1412(a)(10)(A); Ed. Code, 56174.5, subd. (b).)

In Issue Five, Student contends during his first grade year, his IEP failed to provide the reasons for determining Student's least restrictive environment to be a special day class. The insufficiencies of Issue Five, are the same as those in Issue Four. Additionally, Student failed to state how this alleged violation denied Student a free appropriate public education. Therefore, Student has failed to state sufficient facts supporting Issue Five, and the claim is insufficient.

In Issue Six, Student contends during his first grade year, the February 13, 2014 IEP failed to provide the necessary components of an appropriate IEP. As with Issue Two, Student fails to state which school district held the IEP team meeting and made an IEP offer of placement and services to Student. Student also fails to identify the components of the IEP which are allegedly inappropriate, and give reasons why the IEP is inappropriate. Therefore, Student has failed to state sufficient facts supporting Issue Six, and the claim is insufficient.

In Issue Seven, Student contents Davis failed to include and provide goals and objective criterial and failed to measure Student's progress in his "IEP/ISP" during the first grade. As with Issue Three, Student fails to identify whether Davis provided an IEP or an ISP; what specifically Davis failed to do, and why it was inappropriate. Therefore, Student has failed to state sufficient facts supporting Issue Seven, and the claim is insufficient.

In Issue Eight, Student contends Davis failed to communicate Student's progress in the "IEP/ISP" speech and language program during the first grade. Student fails to identify whether Davis provided an IEP or an ISP; what District was required to communicate; and how the alleged failure to communicate progress denied Student a free appropriate public education. Therefore, Student has failed to state sufficient facts supporting Issue Eight, and the claim is insufficient.

In Issue Nine, Student contends Parent disagreed with Winters on placement in an appropriate program and related services, at the February 13, 2015 IEP team meeting. Both school districts attended this IEP meeting. Student fails to indicate which district held the IEP team meeting and made the offer of placement and services to Student. Student fails to identify what the IEP team offered as placement and services, and why the placement offered was inappropriate. Further, Student failed to state specific services offered to Student and the reasons why those services were inappropriate. Therefore, Student has failed to state sufficient facts supporting Issue Nine, and the claim is insufficient.

In Issue Ten, Student alleges Davis failed to provide eligible "IEP/ISP" speech and language services for Student during the second grade. Student fails to identify whether Davis was obligated to provide an IEP or an ISP, and for what services Student was eligible. Therefore, Student has failed to state sufficient facts supporting Issue Ten, and the claim is insufficient.

In Issue Eleven, Student alleges the February 13, 2015 IEP team failed to include parent's letter and written notice to Davis. Student fails to identify which school district held the IEP team meeting. Student fails to describe the content of these documents; and Student fails to identify how the alleged exclusion of these documents denied Student a free appropriate public education. Therefore, Student has failed to state sufficient facts supporting Issue Eleven, and the claim is insufficient.

In Issue Twelve, Student alleges the school district failed to give due consideration to a parentally obtained independent education evaluation. Student has failed to clearly distinguish an independent education evaluation from a tutoring program progress report. Student has failed to identify the independent education evaluation presented to the IEP team on February 13, 2015; the date it was prepared, and the name of the person who administered the assessments and presented the findings. Further Student fails to identify any specific recommendations or parts of the report which the IEP team failed to discuss at the IEP team meeting. Therefore, Student has failed to state sufficient facts supporting Issue Twelve, and the claim is insufficient.

In Issue Thirteen, Student alleges the IEP team failed to include the recommendations of Dr. Grimes in the IEP on April 14, 2014. Student contends Dr. Grimes assessed Student pursuant to an individual education evaluation at public expense. Student provides no further information regarding the assessment or assessment report. Student does not indicate what areas of suspected disability were assessed by Dr. Grimes, or what specific recommendations should have been included in the IEP and why. Therefore, Student has failed to state sufficient facts supporting Issue Thirteen, and the claim is insufficient.

In Issue Fourteen, Student alleges during the second grade, "refusal to provide prospective goals by notification in certified letter dated July 6, 2015, which was sent to (parent) by Winters." Student's contention is not phrased in a complete sentence to identify an issue. Therefore, Student's Issue Fourteen fails to state a problem, and fails to contain supporting facts, and the claim is insufficient.

In Issue Fifteen, Student alleges the April 14, 2015 IEP does not contain the name or type of reading program selected by the school district or that the program meets peer reviewed standards. Student has failed to identify which school district is responsible for Student's 2015 IEP. Student fails to state why the school district is required to name a reading program in the IEP, or why she feels a program selected by the school district is not appropriate or peer reviewed. Therefore, Student has failed to state sufficient facts supporting Issue Fifteen, and the claim is insufficient. Accordingly, Student has failed to allege any legally sufficient issue as to either Davis or Winters.

Mediator assistance is available for a parent who is not represented by an attorney. A non-represented parent may request that the Office of Administrative Hearings 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.

ORDER

1. Student's complaint, consisting of 15 issues, 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).[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.

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.

DATE: August 19, 2015

/S/
JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings

[9] Ed. Code, § 56505.

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