BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: ACALANES UNION HIGH SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2013030937 ORDER DETERMINING DISTRICT'S COMPLAINT TO BE INSUFFICIENT

On February 13, 2013, Parent, on behalf of Student, filed a due process hearing request (complaint) naming District, which proceeding was designated OAH case number 2013020547 (Student's case). Parent is unrepresented.

On March 21, 2013, District filed a due process hearing request (complaint), naming Parent on behalf of Student and initiating this proceeding.

On March 27, 2013, Student filed a second "addendum" to his complaint in Student's case, which addendum contained a notice of insufficiency (NOI) as to District's complaint in this proceeding. Student's second "addendum" will be treated as an NOI to District's complaint in this proceeding.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint. (20 U.S.C. § 1415(b) & (c).) 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.[1] These requirements prevent vague and confusing complaints, and promote fairness by providing the

[1] 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.[2]

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint."[3] The pleading requirements should be liberally construed in light of the broad remedial purposes of the Individuals with Disabilities Education Act (IDEA) and the relative informality of the due process hearings it authorizes.[4] Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.[5]

DISCUSSION

District's complaint alleges that it has "offered" an independent educational evaluation (IEE) at District expense to Student, which it needs to assess Student's in all areas of suspected disability, but that Parent has refused to consent to the IEE. District seeks an order compelling Parent to agree to an IEE.

A student may be entitled to an IEE if he or she disagrees with an evaluation obtained by the public agency and requests an IEE at public expense. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502 (a)(1)(2006)2; Ed. Code, § 56329, subd. (b) [incorporating 34 C.F.R. § 300.502 by reference]; Ed. Code, § 56506, subd. (c) [parent has the right to an IEE as set forth in Ed. Code, § 56329]; see also 20 U.S.C. § 1415(d)(2) [requiring procedural safeguards notice to parents to include information about obtaining an IEE].) In response to a request for an IEE, an educational agency must, without unnecessary delay, either: (1) file a due process complaint to request a hearing to show that its evaluation is appropriate; or (2) ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria. (34 C.F.R. § 300.502(b)(2); see also Ed.

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[2] See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

[3] Sen. Rep. No. 108-185, *supra*, at p. 34.

[4] *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.].

[5] 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).

Code, § 56329, subd. (c) [providing that a public agency may initiate a due process hearing to show that its assessment was appropriate].) A district, on the other hand, has the right to conduct assessments, and parental consent is generally required before assessments are undertaken. (20 U.S.C. § 1414(a)(1)(C)(i); Ed. Code, § 56321, subd. (c).) A district can override a lack of parental consent to a district assessment if it LEA prevails at a due process hearing. (20 U.S.C. § 1414(a)(1)(D)(ii); Ed. Code, § 56506, subd. (e).)

Here, OAH cannot determine what "problem" District is alleging, particularly in light of the law above. Specifically, District's complaint is ambiguous about whether it is in response to a Student request for an IEE, whether District wants to assess Student without parental consent, or something else. Therefore, District's complaint fails to give Student the required notice of a "problem" under the IDEA and proposed resolutions "to the extent known and available" at the time. Accordingly, the complaint is insufficient and will be dismissed unless amended.

ORDER

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

2. District shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).[6] District's 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. If District fails to file a timely amended complaint, the complaint will be dismissed.

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

4. Student shall not file any further "addendums" in this proceeding. Any future prehearing requests or motions, or any future opposition to a District request or motion, filed by Student shall be clearly identified as such, and shall not be labeled as an "addendum" to Student's complaint.

Dated: March 29, 2013

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

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