BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. YREKA UNION ELEMENTARY SCHOOL DISTRICT, SUSANVILLE SCHOOL DISTRICT, REDDING SCHOOL DISTRICT, BISHOP UNIFIED SCHOOL DISTRICT AND FAR NORTHERN REGIONAL CENTER.	OAH Case No. 2018040761 ORDER DETERMINING DUE PROCESS COMPLAINT TO BE INSUFFICIENT AS AGAINST REGIONAL CENTER AND GRANTING LEAVE TO AMEND

On April 11, 2018, Student filed a due process hearing request[1] (complaint) with the Office of Administrative Hearings naming Yreka Union Elementary School District, Susanville School District, Redding School District, Bishop Unified School District and Far Northern Regional Center (Regional Center).

On April 20, 2018, Regional Center filed a joint demurrer and motion to dismiss. On April 25, 2018, Student filed an opposition.

Motions filed with OAH must be filed separately, and OAH will not address joint motions. Accordingly, this order will address Regional Center's demurrer. Due process hearings in California are conducted under the Administrative Procedures Act, rather than the Code of Civil Procedure, and there is no procedure for demurring to a due process hearing request. Accordingly, Regional Center's demurrer will be treated as a timely filed notice of insufficiency.

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).

[1] A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 U.S.C. 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 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. (20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).) 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. (See H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.)

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint." (Sen. Rep. No. 108-185, *supra*, at p. 34.) 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. (*Alexandra R. ex rel. Burke v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, CIV. 06-CV-0215-JL) 2009 WL 2957991[nonpub. opn.]; *Escambia County Bd. 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, 8:04CV2657T24EAJ) 2005 WL 2850076 [nonpub. opn.]; but cf. *M.S.-G v. Lenape Regional High School Dist. Bd. of Educ.* (3d Cir. 2009) 306 Fed.Appx. 772, 775 [nonpub. opn.].) Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge. (*Assistance to States for the Educ. of Children with Disabilities & Preschool Grants for Children with Disabilities* (Aug. 14, 2006) 71 FR 46,540-46541, 46699.)

DISCUSSION

Student's complaint alleges, as to Regional Center, that Regional Center denied Student a FAPE by (a) failing to provide him with an appropriate residential placement and (b) denying Parent meaningful participation in the individualized education program process. Student alleges that on December 16, 2016, Regional Center placed Student in residential treatment center that did not meet Student's educational needs, and unilaterally terminated the placement on December 27, 2017. At some unknown date, the residential center made allegedly incorrect statements to Redding School District, which Student alleges interfered with Parent's ability to participate in the IEP during a time that is not specified. Student also contends that Regional Center "failed to permit" Parent to provide Student with after school tutoring at some unidentified time. Student's complaint is insufficiently pled in that it fails to provide Regional Center with the required notice of a description of the problem and the facts relating to the problem.

Student fails to allege basic facts necessary to identify a controversy under the IDEA between Student and Regional Center. It is not enough to allege that Regional Center placed Student in a treatment center. Public hospitals place children in residential medical wards and Superior Courts place children in juvenile detention, but these entities are not

educational agencies and those actions do not obligate those entities to provide a child with a FAPE under the IDEA.

In California, people of all ages with developmental disabilities are entitled to receive a variety of services from state Regional Centers under the Lanterman Developmental Disabilities Service Act. (Welf. & Inst. Code, § 4500, et seq.). Eligible persons are referred to as "consumers," and must have disabilities that meet the definition of developmental disabilities under the Lanterman Developmental Disabilities Service Act. (*Id.,* §§ 4512(a) and (d).) Student's allegation that Regional Center, which is not an educational agency, placed him in a residential treatment program falls short of describing a problem regarding the provision of a FAPE by Regional Center, or sufficient facts relating to that problem.[2] Similarly, Student fails to allege facts demonstrating that Regional Center was responsible for the communications between the treatment center and Redding School District.

For Student's complaint not to be vague and confusing, Student must allege facts sufficient to describe actions that impose on Regional Center a duty to provide him with a FAPE under the IDEA, rather than consumer services under the Lanterman Act.

ORDER

1. Student's complaint is insufficiently pled as to Regional Center 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).[3]

3. The amended complaint shall comply with the requirements of title 20 U.S.C. 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 as to Regional Center and proceed against the other named school districts.

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[2] Student's opposition notes that residential treatment center placements may be made under either the IDEA or under the Lanterman Act. (20 U.S.C. § 1412(a)(10)(B); 34 C.F.R. § 300.104; Gov. Code § 7570 *et seq.*; Wel. & Inst. Code §§ 4640-4659.)

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

5. All dates in this matter are confirmed as to other respondents.

DATE: April 27, 2018

DocuSigned by:
Alexa Hohensee
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ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings