BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. OXNARD UNION HIGH SCHOOL DISTRICT.	OAH Case No. 2015040356 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On April 2, 2015, Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming the Oxnard Union High School District. On April 15, 2015, District filed a Notice of Insufficiency as to Student's complaint.[2]

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.[3] 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 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.[4] These requirements prevent vague and confusing

[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] District's motion to dismiss will be ruled upon in a separate order.

[3] 20 U.S.C. § 1415(b) & (c).

[4] 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

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.[5]

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint."[6] 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.[7] Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.[8]

DISCUSSION

Student's complaint contains four issues for hearing, which all involve District's alleged failure to provide Student with a timely Independent Educational Evaluation, provide Father with timely progress reports regarding Student, and not providing Student with a proper educational placement. Student alleges sufficient facts in Issue 1 regarding District's purported failure to timely provide Student with a timely Independent Educational Evaluation, which denied him a FAPE. Therefore, Student alleged sufficient facts to put District on notice as to Issue 1 for hearing. Additionally, Student alleges sufficient facts in Issue 2 that District's purported failure to provide Father with timely reports on Student's progress prevented Father from meaningfully participating in Student's educational decision making process.

Regarding Issue 3, Student's complaint is not sufficiently clear to permit District to understand what Student contends denied him a FAPE. Student's complaint alleges that District did not provide him with an adequate educational placement. However, the complaint does not allege adequately the source of the inadequate placement offer, District's Individualized Educational Program or the alleged ineffective representation by Student's court appointed educational rights holder. Therefore, Student has failed to allege sufficient

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

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

[7] *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.].

[8] 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).

facts to put District on notice as to Issue 3 because District does not know if its purported failure relates to a particular IEP offer or its alleged complicity in the court appointed educational rights holder's inability to properly protect Student's educational rights.

Student's Issue 4 asserts that District violated various Federal and State legal provisions and will be addressed in District's motion to dismiss.

Student's proposed resolution is that District make Student whole for the alleged violations. A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (20 U.S.C. §1415(b)(7)(A)(ii)(IV).) The proposed resolutions stated in Student's complaint are well-defined requests that meet the statutorily required standard of stating a resolution to the extent known and available to Student at the time.

ORDER

1. Issues 1, 2, and 4 of Student's complaint are sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).

2. Issue 3 of Student's complaint is insufficiently pled under title 20 United States Code section 1415(c)(2)(D).

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

4. 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.

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues 1, 2, and 4 in Student's complaint.

DATE: April 22, 2015

/s/
PETER PAUL CASTILLO
Presiding Administrative Law Judge
Office of Administrative Hearings

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