BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. RIVERSIDE UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013031014 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On March 25, 2013, Student's parents on behalf of Student (Student) filed a due process hearing request[1] (complaint) naming Riverside Unified School District (District).

On March 29, 2013, the District filed a notice of insufficiency (NOI) as to Student's complaint.

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 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

[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).

[3] 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.[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 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 due process request contains two issues. The first issue alleges that the District noticed an individualized education program (IEP) team meeting as an "interim" meeting, but told the parent it would be an annual meeting after the parent arrived at the meeting. Student's parent asked to finish the interim meeting, but the district refused. Student's proposed resolution states "Interim meeting held prior to annual. Proper notice for annual meeting."

Student's second issue alleges: "Communication with parents prior to annual meeting to discuss goal proposal was never initiated by school district. Parents were not ready to discuss annual goals as parents were never notified of district's intentions."

The proposed resolution for the second issue is stated as follows: "Upon parents' requests, district to comply with ending meetings which parents are not prepared to participate; district to communicate prior to meeting to discuss proposed goals."

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[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 attaches to Student's complaint copies of an IEP team meeting notice sent by the District and the notes of two IEP meetings. The meeting notice sent on March 5, 2013, has a box checked that says "interim" and boxes checked to indicate the "purpose of this meeting" is "to discuss or review your child's need for special education and/or services...to recommend an appropriate education placement;" and "if special education is necessary, to write an Individualized Education Program."

The IEP team meeting notes attached to Student's complaint state that the District tried to schedule a meeting for March 12, 2013, but Student's mother was unable to attend. Student's mother attended a meeting on March 20, 2013, and the team discussed things such as the parents' request for an independent educational evaluation. When the discussion turned to annual goals, Student's mother was not prepared to discuss the goals, so a new meeting was set for March 29, 2013, and the notes indicate it was to be an "annual review." Student's mother left the meeting and requested that proposed goals be shared with the family prior to the next meeting.

It is not entirely clear why Student objects to the District's actions. Apparently Student's due process complaint is based on the checking of the box stating "interim" on the IEP meeting notice rather than the box stating "annual," and the desire of Student's parents to have an "interim" IEP meeting held before an annual meeting. Student cites to no law, regulation or case authority indicating that a District cannot discuss annual goals when a meeting notice has a box checked with the word "interim." Nor does Student cite to any authority requiring a school district to hold an "interim" IEP prior to an annual IEP.

Special education law requires that a child's parents be given notice of an IEP meeting "early enough to ensure an opportunity to attend." (Ed. Code, § 56341.5, subd. (b).) Education Code section 56341.5, subdivision (c) provides, in part that:

> The individualized education program meeting shall be scheduled at a mutually agreed-upon time and place. The notice of the meeting under subdivision (b) shall indicate the purpose, time and location of the meeting and who shall be in attendance.

The law provides that a District can offer a 30-day "interim" IEP when a child transfers to a new school district during the school year (see Ed. Code, § 56325), but does not forbid the District from discussing annual goals at a meeting to discuss an interim IEP. Instead, the law requires the district to provide comparable services to the child for a period not to exceed 30 days by which time the district "shall adopt the previously approved individualized education program or shall develop, adopt, and implement a new individualized education program that is consistent with federal and state law." (Ed. Code, § 56325, subd. (a); see also 34 C.F.R. § 300.323(e) (2006).)

Even if there was a legal basis for Student's claim, Student fails to allege facts sufficient to support the claim. The very documents that Student attaches to the due process request indicate that Student's parents were given notice that Student's IEP would be

discussed during the meeting. The documents show that the District offered to hold a new IEP meeting after Student's mother objected to discussing the goals. Under those circumstances, it is hard to see how Student's or Student's parents' rights have been violated.

However, it is appropriate to give Student leave to amend the complaint. It is possible that Student has facts giving rise to a procedural violation, but has not clearly stated those facts in the current complaint.

A parent who is not represented by an attorney may request that the Office of Administrative Hearings (OAH) provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint Student's parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

ORDER

1. Student's complaint is insufficiently pled under section Title 20 United States Code section 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).[8]

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.

Dated: April 2, 2013

/s/
SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings

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