BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LOLETA UNION SCHOOL DISTRICT.	OAH Case No. 2015090260 ORDER DETERMINING COMPLAINT TO BE PARTIALLY INSUFFICIENT

On September 2, 2015, Parent on behalf of Student filed a Due Process Hearing Request[1] naming the Loleta Union School District.

On September 17, 2015, District timely filed a Notice of Insufficiency 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 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

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[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

Issues in the Complaint

Student's complaint contains five issues. District contends that Student's fifth issue (numbered as issue 1(e) in the complaint) is insufficient. In this issue, Student alleges that District denied him a FAPE for the 2013-2014 and 2014-2015 school years by failing to maintain his records. District contends that the issue is insufficient because Student fails to state how the alleged failure to maintain his records specifically denied him a FAPE.

Student's complaint does not clearly delineate how the alleged lack of records affected Student's ability to receive a FAPE or prevented his parent from participating in the process to develop an individualized education program for him. The only contention regarding Student's records are at paragraphs nine and 13 of the complaint. In paragraph nine, Student contends that it is impossible to know for how many days he was suspended during the 2011-2012 school year, when he was in fourth grade, because his school records cannot be located. However, the 2011-2012 school year is far outside the applicable statute of limitations in this case, which starts on September 2, 2013. Student does not contend that

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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).

he is alleging a denial of FAPE for the 2011-2012 school year. In any case, even if the 2011-2012 was within the statute of limitations, Student fails to state how the failure to pinpoint the exact amount of days he was suspended denied him a FAPE, or interfered with his parent's ability to participate in the IEP process.

In paragraph 13, Student states that due to the lack of complete school records it is hard to understand what happened to him during the 2013-2014 school year. Student however fails to state any facts that would show how the alleged lack of incomplete records denied him a FAPE or prevented his parent from participating in the IEP process.

For these reasons, Student's issue 1(e) is insufficient as presently pled.

Resolutions

Student's complaint contains eight proposed resolutions. District contends that the resolutions are insufficient because Student does not want the resolutions requested in his complaint. In its notice of insufficiency, District states that it offered to provide the resolutions to Student during the parties' resolution meeting, but that Student rejected the offer because the resolutions in the complaint were only meant to be general rather than specific requests. District contends that it was therefore unable to engage in a meaningful resolution session based on Student's it offered to provide the resolutions.

The only requirement regarding proposed resolutions in a due process complaint is that the complaint includes 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).) District points to no authority that a petitioning party is restricted to the resolutions proposed in a complaint, or that the party must accept the resolutions as a remedy to settle the case.

In any case, the statutory requirement addresses the sufficiency of a complaint as written, not actions taken by a party outside the complaint. A determination of whether a complaint is sufficient is based on what is written in the four corners of the complaint, not on extrinsic evidence of a party's actions in accepting or rejecting a settlement proposal. District does not contend that Student failed to include resolutions, or that the resolutions are not comprehensible. Student's proposed resolutions, on their face, meet the statutory requirement. In the context of determining the sufficiency of a complaint, that is all that is required in a complaint.

ORDER

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

2. Issue 1(e) of Student's complaint is insufficiently pled under title 20 United States Code section 1415(c)(2)(D).

3. Student's proposed resolutions are sufficient as pled.

4. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).[8]

5. 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.

6. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues 1(a) through 1(d) of Student's complaint.

DATE: September 21, 2015

/s/
DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings

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