BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. VACAVILLE UNIFIED SCHOOL DISTRICT AND BUCKINGHAM CHARTER MAGNET HIGH SCHOOL	OAH Case No. 2015050169 ORDER GRANTING NOTICE OF INSUFFICIENCY

On April 22, 2015, Parent on Student's behalf (Student) filed with the Office of Administrative Hearings a Due Process Hearing Request[1] (complaint) naming Vacaville Unified School District (District). On May 7, 2015, District timely filed a Motion to Dismiss or alternatively a Notice of Insufficiency (NOI) as to Student's complaint. Student filed a reply on May 12, 2015. For the reasons discussed below, the NOI is granted with leave to amend.

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 complaint alleges that on December 12, 2013, District disciplined Student for violation of Education Code section 48911(g) and suspended or attempted to expel Student. Student asserts that District relied upon the incorrect legal authority for its actions and therefore improperly disciplined Student. Student does not allege facts asserting that District violated the Individuals with Disabilities Education Act thereby denying Student a free appropriate public education. Parent seeks as proposed resolutions rescission of all reference to the December 12, 2013 incident from Student's records, 1240 minutes a week of independent study until Student graduates, a formal apology by District, and training for staff.

On its face, the complaint does not state any specific facts that identify Student as a child eligible for special education, what his unique needs were at the time in question, nor does it specifically identify any conduct by District occurring during the 2-year statutory period that would give OAH jurisdiction to hear and decide issues under the Individuals with Disabilities Education Act, Title 20 United States Code sections 1400 et. seq., relating to the identification, evaluation or placement of Student. Although Parent alludes to additional facts

---

[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).

in her reply brief, those facts are not in the complaint. Student's complaint is insufficiently pled because it fails to provide District with the required notice of a description of the problem and the facts relating to the problem.

District's Notice of Insufficiency is granted with leave to amend. If Student amends, the complaint should include specific facts describing Student's eligibility for special education and his unique needs, when the actions complained of occurred, what occurred, and how and for what time period those actions denied Student access to a free appropriate public education.

MEDIATOR ASSISTANCE FOR NON-REPRESENTED PARENTS: A parent who is not represented by an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint [8] 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 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).[9]

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.

DATE: May 12, 2015

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings

8 Ed. Code, § 56505.

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