BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. NOVATO UNIFIED SCHOOL DISTRICT, REED UNION SCHOOL DISTRICT, AND LARKSPUR-CORTE MADERA SCHOOL DISTRICT.	OAH Case No. 2014090047 ORDER DETERMINING COMPLAINT TO BE INSUFFICIENT AS TO NOVATO UNIFIED SCHOOL DISTRICT

On August 27, 2014, Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming the Novato Unified School District, the Reed Union School District, and the Larkspur-Corte Madera School District.

On September 9, 2014, Novato filed a Notice of Insufficiency (NOI) as to Student's complaint, contending that Student's complaint did not give it fair notice of the issues to be adjudicated. Novato states that Student's complaint is devoid of any information supporting Student's allegations that Novato failed to provide Student with a free appropriate public education, other than the information that Student resides in the city of Novato. Novato therefore requests an order finding Student's complaint insufficient as to it.[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

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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] Larkspur-Corte Madera School District and Reed Union School District have also filed notices of insufficiency, which will be addressed by OAH in separate orders.

[3] 20 U.S.C. § 1415(b) & (c).

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.[4] 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.[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 IDEA 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

As pointed out by Novato in its NOI, other than indicating that Student presently lives in the city of Novato, there is no mention of Novato Unified School District in Student's complaint. Although Student makes specific allegations concerning the actions or lack of action by the other named school districts, no such allegations or facts are made against Novato. The complaint is devoid of any connection between the allegation that the

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

[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).

"districts" failed in their child find obligations to Student and the Novato Unified School District. For this reason, Student's complaint is insufficient as to Novato.

ORDER

1. Student's complaint is insufficiently pled under title 20 United States Code 1415(c)(2)(D) as to Novato.

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 as to Novato.

5. All dates previously set in this matter shall remain on calendar as to Larkspur-Corte Madera and Reed, unless OAH issues orders finding Student's complaint insufficient as to those districts.

DATE: September 10, 2014

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings

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