BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. TRACY JOINT UNIFIED SCHOOL DISTRICT, SAN JOAQUIN COUNTY OFFICE OF EDUCATION, AND JEFFERSON ELEMENTARY SCHOOL DISTRICT.	OAH CASE NO. 2013070550 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On July 10, 2013, Parent on behalf of Student (Student) filed with the Office of Administrative Hearings (OAH) a Due Process Hearing Request[1] (complaint) naming the Tracy Joint Unified School District (TJUSD), the San Joaquin County Office of Education (SJCOE), and the Jefferson Elementary School District (JESD).

On July 19, 2013, the TJUSD and the SJCOE timely filed a Notice of Insufficiency (NOI) 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,

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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] On July 19, 2013, the JESD, through counsel, filed a response to Student's complaint.

[3] 20 U.S.C. § 1415(b) & (c).

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

Student alleges one claim in the complaint, which is insufficiently pled. Student's sole issue for due process is the following assertion:

> "School of placement not in his community could be mentally, physically, emotionally and psychologically damaging to [Student]. SJCOE is aware of such based on 4-2/12 IEP pg. 13 aware of fear car [*sic*], 4-18-11 EEP [*sic*] pg. 12 needs to hold staff hand on bus, 4-9-13 IEP – possible seizure, 4-19-13 Dr. Hayward's letter of additional medical problems."

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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).

Student's sole claim is not supported by any further details or information. Student's complaint is vague and fails to provide enough facts to provide an adequate description of the nature of the problem so that the respondents can understand the allegation and prepare for resolution, mediation, and due process hearing. As pled, it is difficult to ascertain which placement is being disputed, who the responsible agency is, the time frame contested, what additional medical problems may be at issue and how such relates to Student's IEP's, or how Student was denied a FAPE.

Consequently, Student's complaint is insufficiently pled in that it fails to provide the TJUSD and SJCOE with the required notice of a description of the problem and the facts relating to the problem.

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.[9] Student is encouraged to contact OAH for assistance if he intends to amend his 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).[10]

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 the TJUSD and the SJCOE.

5. If Student's parent wishes mediator assistance to file an amended complaint, she may contact OAH in Sacramento to make the request.

6. All dates previously set in this matter are vacated as to the SJCOE and TJUSD. All dates shall remain as presently set in this matter as to the JESD.

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9 Ed. Code, § 56505.

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

Dated: July 23, 2013

/s/

PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings