BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
SPECIAL EDUCATION DIVISION
STATE OF CALIFORNIA

In the Matter of: STUDENT, Petitioner, vs. NEWPORT-MESA UNIFIED SCHOOL DISTRICT, Respondent.	OAH No. N2006060320 **DETERMINATION OF SUFFICIENCY OF DUE PROCESS HEARING REQUEST NOTICE**

On June 12, 2006, the Office of Administrative Hearings (OAH) received a due process hearing complaint from attorney Maureen Graves, on behalf of Petitioner Student (Petitioner). On June 19, 2006, OAH received from attorney Vivian Billups on behalf of Respondent Newport-Mesa Unified School District (District) a Notice of Insufficiency (NOI) regarding Petitioner's due process hearing complaint.[1]

APPLICABLE LAW

The Individuals with Disabilities Education Improvement Act of 2004 became effective July 1, 2005, and significantly amended Title 20 United States Code section 1415(b) and (c). Either party now has the right to challenge the sufficiency of any due process hearing complaint notice (Complaint). In addition, a party filing the Complaint is not entitled to a hearing if it does not comply with subparagraph (b)(7)(A). The specific subsections at issue are:

20 U.S.C. § 1415(c)(2)(A) provides that either party has the right to challenge the sufficiency of any Complaint.

[1] The District's motion also moved to dismiss the complaint on other grounds including collateral estoppel, res judicata, statute of limitations, and lack of subject matter jurisdiction. Because of the outcome of the present order, the District's motion to dismiss on other grounds is currently moot. Hence, Petitioner need not respond to that motion, and OAH will not rule on the motion at this time.

20 U.S.C. § 1415(b)(7)(B) provides that a party filing the Complaint is not entitled to a due process hearing if the Complaint does not comply with 20 U.S.C. § 1415(b)(7)(A).

20 U.S.C. § 1415(c)(2)(D) provides that the hearing officer shall make a determination "on the face of the notice" whether the Complaint meets the requirements of 20 U.S.C. § 1415(b)(7)(A).

20 U.S.C. § 1415(b)(7)(A)(ii)(III) provides that the Complaint shall include "a description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem…."

20 U.S.C. § 1415(b)(7)(A)(ii)(IV) provides that the Complaint shall also include "a proposed resolution of the problem to the extent known and available to the party at the time."

20 U.S.C. § 1415(c)(2)(D) provides that within 5 days of receipt of a notice of insufficiency, the hearing officer shall make a determination on the face of the Complaint whether it meets the requirements of subdivision (b)(7)(A).

20 U.S.C. § 1415(c)(2)(E) provides that an amended complaint may be filed only when either (a) the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or (b) the hearing officer grants permission, provided the request occurs more than 5 days prior to the due process hearing.

20 U.S.C. § 1415(c)(2)(E)(ii) provides that the applicable timelines for a due process hearing shall commence anew upon the filing of an amended Complaint.

Hence, there are three distinct elements, among others, that a Complaint must have to be sufficient. The Complaint must include (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 FAPE to the child (§ 1415(b)(3) and (b)(7)(A)(ii)(III)); (2) facts relating to the problem (§ 1415(b)(7)(A)(ii)(III)); and (3) a proposed resolution of the problem to the extent known and available to the party at the time (§ 1415(b)(7)(A)(ii)(III)).

Moreover, fundamental principles of due process apply to these types of administrative proceedings. As such, a respondent is entitled to know the nature of the specific allegations in order to prepare a defense. (*Tadano v. Manney* (9th Cir. 1947) 160 F.2d 665, 667; *Hornsby v. Allen* (5th Cir. 1964) 326 F.2d 605, 608.)

DISCUSSION

The House Committee on Education and the Workforce, in its analysis of Section 1415(b)(7), stated that the requirement of a clear and specific Complaint is essential to make the complaint process work in a fair and equitable manner. (H.R.Rep. No. 108-77, 1st Sess. (2003).)[2] The Senate Committee on Health, Education, Labor and Pensions, in its analysis of Section 1415(b)(7), stated, "The purpose of the sufficiency requirement is to ensure that the other party, which is generally the school district, will have an awareness and understanding of the issues forming the basis of the complaint." (Sen.Rep. No. 108-185, 1st Sess., page citation unavailable (2003).) The purpose of Section 1415(b)(7) is to avoid leaving the school district with no idea as to what the real issues will be at the due process hearing, and forcing the district to prepare for any and every issue that could be possibly raised against it. (*Ibid*.) In addition, the specificity requirements of Section 1415(b)(7) allow a school district to provide, if necessary, a specific response to the student under Section 1415(c)(2)(B), and to participate fully in the informal resolution process under Section 1415(f)(a)(B) and mediation under Section 1415(e). (*Ibid*.)

In the present case, the Complaint contains 43 issues and consists of 57 pages, most of which are single-spaced. Over the course of these 57 single-spaced pages, the Complaint bombards the reader with various facts and contentions, yet leaves one with little clear understanding of what is actually in dispute and what Petitioner actually seeks to have resolved in a due process hearing.[3] Such excessive, voluminous pleading obscures the underlying issues and runs contrary to Congress's purpose in requiring a clear, specific Complaint. Indeed, it would likely be impossible for the District to provide a specific response to Petitioner's Complaint.

ORDER

1. The Complaint is insufficient under 20 U.S.C. section 1415(b)(7)(A)(ii).

2. Pursuant to 20 U.S.C. section 1415(c)(2)(E)(ii), Petitioner shall be permitted to file an amended due process complaint.[4]

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[2] The House Report noted, "If a parent cannot identify a specific problem, then the parent should ask to reconvene the IEP [Individualized Education Program] Team and discuss what their [sic] concerns are rather than filing a complaint to see if a hearing officer can determine the problem." (H.R.Rep. No. 108-77, 1st Sess., page citation unavailable (2003).)

[3] Both the Complaint and the District's motion to dismiss indicate that many of the allegations and time periods raised in this Complaint were already litigated in a 2005 due process hearing before the California Special Education Hearing Office. Given these circumstances, it is difficult to understand which allegations Petitioner actually seeks to litigate in the present case.

[4] Filing of an amended complaint restarts the applicable timelines pursuant to 20 USC 1415(c)(2)(E)(ii).

3. The amended due process complaint shall conform to the requirements of 20 U.S.C. section 1415(b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.

4. If Petitioner fails to file an amended due process complaint within 14 days, the Complaint shall be dismissed.

Dated: June 26, 2006

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SUZANNE B. BROWN
Administrative Law Judge
Special Education Division
Office of Administrative Hearings