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

In the Matter of: STUDENT, Petitioner, vs. ELK GROVE UNIFIED SCHOOL DISTRICT, Respondent.	OAH No. 2006030514 **DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT AND ORDER**

On March 14, 2006, the Office of Administrative Hearings (OAH) received from H. Chuck House, education advocate, a request for a due process hearing (Complaint), on behalf of Student, which names as the Respondent the Elk Grove Unified School District (District).[1] On March 29, 2006, OAH received from attorney Van T. Vu, on behalf of the District, a Notice of Insufficiency (NOI) as to Petitioner's Complaint for not meeting the requirements of Title 20 United States Code section 1415(b)(7)(A).[2]

APPLICABLE LAW

The reauthorized Individuals with Disabilities Education Act (IDEA) became effective July 1, 2005, and Section 1415, subsections (b) and (c), underwent significant amendment. Under the amended subsections, either party now has the express right to challenge the sufficiency of any due process complaint notice (Complaint) and a party filing the Complaint is not entitled to the hearing if it does not comply with subsection (b)(7)(A). The specific subsections at issue are:

Section 1415(b)(7)(A)(ii)(I) provides that the due process complaint notice shall include the name and residence address of the child …and name of the school the child is attending.

[1] The same day, Petitioner filed a Stay Put Motion, which will be determined in a separate order.
[2] All statutory citations are to Title 20 United States Code, unless otherwise noted.

Section 1415(b)(7)(A)(ii)(III), which 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;…"

Section 1415(b)(7)(A)(ii)(IV), which provides that the Complaint shall include "a proposed resolution of the problem to the extent known and available to the party at the time;"

Section 1415(b)(7)(B), which provides that a party is not entitled to a due process hearing until its Complaint meets the requirements of subsection (b)(7)(A);

Section 1415(c)(2)(D), which 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 subsection (b)(7)(A); and

Section 1415(c)(2)(E), which provides that a party may amend the Complaint only if the hearing officer grants permission, or as otherwise specified.

DISCUSSION

Fundamental principles of fairness apply to this type of administrative proceeding. As such, a respondent is entitled to know the nature of the specific allegations being made against it so that respondent may be able 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.) This notice pleading standard has been defined as requiring a petitioner to file a complaint that sets forth in ordinary and concise language the acts or omissions with which the respondent is charged, to the end that the respondent will be able to prepare his defense. (See, *Stearns v. Fair Employment Practice Com* (1971) 6 Cal.3d 205, 213; *Block v. Ambach* (N.Y. 1989) 537 N.E. 2d 181, 185; *Pergament United Sales, Inc. v. NLRB* (2d Cir. 1990) 920 F.2d 130, 134.)

When Congress re-authorized the IDEA, the House Committee on Education and the Workforce's analysis of Section 1415(b)(7) stated that the requirement of a clear and specific notice is essential to make the complaint process work in a fair and equitable manner. (H.R.Rep. No. 108-77, 1st Sess., page citation unavailable (2003).)[3] The Senate Committee on Health, Education, Labor and Pensions, 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)(emphasis added)). This committee made clear that the purpose of Section 1415(b)(7) is to avoid

[3] 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).)

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 committee noted that 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) (emphasis added), and to participate fully in the informal resolution process under Section 1415(f)(a)(B), and mediation under Section 1415(e). (Ibid.) A notice that lacks adequate specificity frustrates, if not vitiates, a district's ability to meet these obligations.

The degree of sufficiency necessary for any request for due process hearing can best be determined by reviewing the requirements placed on the party who must respond to such a request. A respondent is required, within 10 days of receiving the complaint, to send a response "that specifically addresses the issues raised in the complaint." (§ 1415(c)(2)(B)(ii).) A "non-complaining" party would be unable to respond with the required specificity imposed by this statute if the complaint itself is vague. Section 1415(c)(2)(B)(i)(I) requires the respondent to file a detailed response that includes:

> (aa) an explanation of why the [district] proposed or refused to take the action raised in the complaint;
> (bb) a description of other options that the IEP Team considered and the reasons why those options were rejected;
> (cc) a description of each evaluation procedure, assessment, record, or report the [district] used as the basis for the proposed or refused action; and
> (dd) a description of the factors that are relevant to the agency's proposal or refusal.

Examining these requirements, it is evident that any request for due process must describe the acts or omissions of the respondent, and other complaints, with the same degree of specificity that is called for in the response to the notice. 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)). The Complaint needs to allege a clear nexus between the factual allegations and the alleged violations.

Petitioner's first contention concerns the District's failure to protect Student at school from gang member threats, which caused Student's Grandmother to remove Student from school. However, Petitioner does not allege adequate facts concerning this contention as the Complaint does not contain any allegations that the threats were related to the District providing Student special education services.

Petitioner's second contention involves the District's offer to provide Student with five hours of weekly tutoring in conjunction with home schooling after Student left the District school. After the District made this offer, Student's Grandmother placed Student in

a non-public school, whose name is not disclosed in the Complaint. The Complaint alleges that the District's offer was not sufficient as Student requires intensive academic services due to his failing grades. As a proposed resolution for this contention, Petitioner seeks a placement in Student's current non-public school. This contention and proposed resolution are not sufficient as Petitioner does not allege why Student requires a placement in his current non-public school to meet his special education needs. Additionally, Petitioner's failure to disclose the name of Student's current non-public school prevents the District from responding to the Complaint as the District cannot respond to the contention that this school meets Student's special education needs. Finally, Petitioner asserts that Student requires a placement in a more restrictive setting to meet his needs. However, Petitioner does not define what are Student's needs and why those needs must be met in a more restrictive setting.

Petitioner's third contention is that the District since the 2002-2003 school year has not provided Student with a Free Appropriate Public Education (FAPE). The basis of Petitioner's assertion is that the District did not provide Student with FAPE because the District continued the same academic program for Student despite the fact that Student continued to receive failing grades during this period. However, Petitioner fails to allege what type of academic program or services that Student requires. The Complaint mentions that the District stated in a recent IEP that Student does better with one-on-one or a small structure setting instruction. However, the Complaint does not allege whether the District provided Student with this type of instruction. Therefore, this contention is not sufficient as the Complaint does not contain adequate allegations why the District's academic program does not provide Student with FAPE and the type of program that Student requires.

The fourth contention alleges that the District failed to provide Student's Grandmother with progress reports and testing results. This contention is not adequate as Petitioner fails to allege whether the District's failure to disclose was a one time incident or a continuous omission. Petitioner's fifth contention asserts that the District since the 2002-2003 school year has not provided Student with FAPE by not offering Student special education services during the extended school year. However, the Complaint is not sufficient as Petitioner does not allege why the District needs to provide with Student special education services during the extended school year. The fact Student's Grandmother requested special education services during the extended school year does not mean that the District must provide this service.

ORDER

1. Pursuant to Section 1415(c)(2)(D), the District's challenge to the sufficiency of Petitioner's Complaint is granted.

2. Pursuant to Section 1415(c)(2)(E)(i)(II), Petitioner shall be permitted to file an Amended Complaint.

3. The Amended Complaint shall comply with the requirements of 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 a timely Amended Complaint, the Complaint shall be dismissed and the case will be closed.

5. All mediation, hearing or prehearing conference dates in this matter are vacated.

Dated: April 5, 2006

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PETER PAUL CASTILLO
Administrative Law Judge
Special Education Division
Office of Administrative Hearings