BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. DRY CREEK JOINT ELEMENTARY SCHOOL DISTRICT, PLACER COUNTY OFFICE OF EDUCATION, AND PLACER COUNTY CHILDREN SYSTEM OF CARE.	OAH CASE NO. 2010110717 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On November 29, 2010 Student filed a Due Process Hearing Request[1] (complaint) naming Dry Creek Joint Elementary School District (DCJESD), Placer County Office of Education (PCOE), and Placer County Children System Of Care (PCCSOC) as the respondents.

On December 3, 2010, the three respondents each filed separate Notices of Insufficiency (NOIs) as to Student's complaint. As discussed below, the complaint is insufficient.

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

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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] 20 U.S.C. § 1415(b) & (c).

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 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]

Special education due process hearing procedures extend to "the public agency involved in any decisions regarding a pupil." (Ed. Code, § 56501, subd. (a).) A "public agency" is defined as "a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs." (Ed. Code, §§ 56500 and 56028.5.)

OAH does not have jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.).

DISCUSSION

Student's complaint alleges a multi-year course of conduct beginning in 2006 involving Student's prior placement, a facility operated by PCOE, during which Student was

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[3] 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

[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).

allegedly subject to physical restraints in violation of law. On August 3, 2009, parents removed Student from the PCOE facility and placed him in a private school. On August 26, 2009, parents entered into a settlement agreement with DCJESD regarding the costs of the private placement. On or around September 14, 2009, Student was removed from the private school placement and was placed on home hospital instruction.

The complaint makes substantive allegations regarding the physical restraints. The complaint also makes substantive allegations regarding the credentialing of Student's home hospital teachers. However, the complaint is unclear what issues are being stated against which entities, for which time periods.

Furthermore, there do not appear to be any substantive allegations against PCCSOC, nor any facts that establish who this entity is, nor what relationship it had to the claims in this case. Thus, no notice is provided to PCCSOC that would enable it to have an awareness and understanding of the issues forming the basis of the complaint against it.

Finally, Student states claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) which OAH does not have jurisdiction to entertain.

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).[8]

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.

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

5. All dates previously set in this matter are vacated.

Dated: December 09, 2010

/s/

JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings