BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: MOTHER ON BEHALF OF STUDENT, v. VAL VERDE UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013090251 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On September 4, 2013 Mother on behalf of Student (referred to herein as "Mother" or "Student") filed a Due Process Hearing Request[1] (complaint) naming the Val Verde Unified School District (District). Student's complaint contains six issues with proposed resolutions.

On September 27, 2013, the District filed a Notice of Insufficiency (NOI) as to Student's complaint.

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).

The complaint is deemed sufficient unless a party notifies the Office of Administrative Hearings (OAH) and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements.[3]

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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).

[3] 20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).

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

Student's complaint was filed with OAH on September 4, 2013. In the first paragraph of its NOI, the District states that it did not receive Student's complaint "in its entirety" until September 18, 2013. The District appears therefore to be making an argument justifying its failure to file its NOI by September 19, 2013, which would be 15 days from the date Student filed his complaint. However, the District offers no evidence in support of its assertion that it failed to receive Student's entire complaint on September 4. The District provides no declaration in support of its contention, does not indicate which portions of the complaint it received on September 4 and which portions it received on September 18, and fails to

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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).

indicate any communications it had with either Student's mother (the petitioning party) or OAH regarding the fact that it had not received a complete complaint document.

Conversely, Student, through Mother, filed a response to the District's NOI in which Student provides evidence that he served a complete copy of his complaint on the District by facsimile on September 4, 2013. Student provides as an exhibit the facsimile confirmation that the entire document was received by the District. Student also provides a copy of a letter correspondence from the District to Mother, dated September 9, 2013, in which the District acknowledges receiving Student's complaint on September 4, 2013. In its letter, the District explains the legal requirement for a resolution session between the parties and further indicates that it scheduled a resolution session for September 18, 2013. Student provides further email correspondence between Mother and the District indicating that Mother agreed to attend the resolution session. Finally, Student attaches a copy of the resolution outcome form, indicating the parties held a resolution session on September 18, 2013, regarding Student's complaint but did not come to agreement on the issues.

There is no indication in any of Student's exhibits, including correspondence from the District to Mother, that the District did not receive the entire due process complaint on September 4, 2013.

The District therefore has failed to support its contention that it did not receive Student's entire complaint until September 18, 2013. To the contrary, the evidence provided by Student indicates that the District received the complaint on September 4, 2013, and held a resolution session as required within 15 days of receipt of the complaint.

The District's NOI, filed on September 27, 2013, is untimely as it was not filed within the statutorily required timeline. Therefore, Student's complaint is deemed sufficient.[9]

ORDER

1. The complaint is deemed sufficient under Title 20 United States Code section 1415(c)(2)(C) and Education Code section 56502, subdivision (d)(1).

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[9] The instant Order overruling the District's NOI does not affect the District's ability to file a motion to dismiss with regard to issues alleged in Student's complaint that may not be within the jurisdiction of OAH.

2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: October 1, 2013

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings