BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. SAUGUS UNION SCHOOL DISTRICT,	OAH CASE NO. 2011040302
SAUGUS UNION SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2011030122 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On April 8, 2011 Michelle Ortega, attorney representing Student filed a Due Process Hearing Request[1] (complaint) naming Sagus Union School District (District).

On April 19, 2011, Lauri A. LaFoe, attorney for 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).

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

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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).

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.[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]

DISCUSSION

Student's complaint alleges five claims four of which are insufficiently pled. A legally sufficient complaint must provide a description of a problem 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. It should contain facts that relate to the stated problem.

Here, each of the first four issues presented provides a numerical reference to a particular statutory or regulatory code section and associated cases. The complaint fails to set forth any description of the alleged problems or provide facts related to the alleged problems except to describe Student's reaction to his program as discussed in more detail below.

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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).

The first four issues presented in the complaint relate to school years 2008/2009; 2009/2010 and 2010/2011 are as follows:

1. The District failed to offer an appropriate placement and supports.

2. The District failed to offer appropriate behavioral interventions.

3. The District failed to offer Student an appropriate placement in the least restrictive environment (LRE).

4. The District failed to offer appropriate frequency, duration and type of designated instructional services (DIS).

Student's complaint contains a separate factual statement which provides detailed information about his reaction to the District's alleged failures, such as his aversion to attending school and self-injurious behavior. However, Student fails to provide specific factual information about the District's purported acts or omissions that form the basis of his first four claims against District. For example, Student alleges he has been denied FAPE for three years prior to filing of the complaint; however, Student fails to reference any of the individualized education plans (IEP) that form the basis of his claims, and explain why the placements and supports in these IEPs were inappropriate.

With regard to Issues one through four, Student fails to allege facts sufficient to provide District with the required notice of a description of the problem and facts relating to the problem. Therefore, Student has failed to state sufficient facts supporting these claims, and the claim is insufficient.

Student's fifth issue is supported by sufficient facts and is sufficiently pled, it is presented as follows.

5. The District committed violations of the IDEA by failing to properly assess the Student in all areas of suspected need.

Student's complaint contains a separate factual statement, which provides detailed information about the assessments the District conducted. This information is complete and provides District with dates, assessments made and recommendations. Issue five is sufficiently pled to put District on notice as to the basis of Student's claims.

ORDER

1. Issues one through four as articulated above from Student's complaint are insufficiently pled under Title 20 United States Code section 1415(c)(2)(D).

2. Issue five as articulated above from Student's complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

3. Student shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).[8]

4. 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.

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issue five as articulated above from Student's complaint.

Dated: April 20, 2011

/s/

MICHAEL G. BARTH
Administrative Law Judge
Office of Administrative Hearings

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