BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SONOMA COUNTY SELPA AND MARE ISLAND TECHNOLOGY ACADEMY.	OAH Case No. 2019021064 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On February 26, 2019, Parent on behalf of Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming Mare Island Technology Academy and Sonoma County Special Education Local Plan Area.[2] OAH deemed that Student's complaint contained expedited and non-expedited issues for hearing. On March 8, 2019 Mare Island filed a Notice of Insufficiency 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. (20 U.S.C. § 1415(b) & (c).) 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 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]

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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 U.S.C. section 1415(b)(7)(A).

[2] Sonoma County SELPA's motion to dismiss is addressed in a separate order.

[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.

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 Individuals with Disabilities Education Act 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]

Title 20 United States Code section 1415(k)(3) permits a party to request an expedited hearing to appeal a decision regarding a disciplinary change of placement, such as placement in an alternative education setting or a manifestation determination regarding student conduct. This section requires an expedited hearing to occur within 20 school days of the date the hearing is requested. There is no provision similar to that in title 20 United States Code section 1415(c)(2)(A) for testing the sufficiency of a request for an expedited hearing pursuant to section 1415(k). Indeed, there is insufficient time to complete the NOI process in expedited hearings.

DISCUSSION

Student's Issue One alleges a failure to implement Student's individualized education plan which resulted in a denial of FAPE related a manifestation determination conducted by Mare Island. Student's Issue Three alleges Mare Island's manifestation determination team members were inappropriate, and Student's Issue Four alleges Mare Island's manifestation determination team withheld and misrepresented information resulting in denial of parental participation. OAH has deemed the issues in Student's complaint relating to a manifestation determination qualify as an expedited matter. Thusly, Issues One, Three and Four, are subject to an expedited hearing, and are exempt from a determination of sufficiency pursuant to the Notice of Insufficiency process.

Student's Issue Two, only states that parental rights have been denied, and that Student seeks a resolution that all rights of parents and children be upheld. As currently alleged, Student's Issue Two is too vague and overbroad to provide sufficient information to understand what Student is requesting. Student's Issue Two fails to specifically identify

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[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).

which parental right(s) were allegedly denied, and when the alleged denial(s) took place. Student further fails to provide any factual allegations to describe and support his contentions that parental rights were denied. Therefore, Student's Issue Two is insufficient.

MEDIATOR ASSISTANCE FOR NON-REPRESENTED PARENTS: A parent who is not represented by an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. (Ed. Code, § 56505.) Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

ORDER

1. Student's Issues One, Three and Four have been deemed expedited, and are therefore exempt from the NOI process. The mediation, prehearing conference, and hearing dates in this matter remain as scheduled, for Student's Issues One, Three and Four.

2. Student's Issue Two, as a non-expedited issue, is insufficiently pled under title 20 United States Code section 1415(c)(2)(D).

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 U.S.C. 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 as to Student's Issue Two, the non-expedited portion of Student's complaint shall be dismissed.

DATE: March 12, 2019

DocuSigned by:
Judith Pasewark
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JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings

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