BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017100396
v.	ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT
UPLAND UNIFIED SCHOOL DISTRICT.	

On October 8, 2017, Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming Upland Unified School District. By order dated October 18, 2017, Student was granted leave to amend his complaint, which he did on October 25, 2017. On November 2, 2017, District filed a Notice of Insufficiency as to the amended 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. (20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).) 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. (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." (Sen. Rep. No. 108-185,

[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).

supra, at p. 34.) 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. (*Alexandra R. ex rel. Burke v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, CIV. 06-CV-0215-JL) 2009 WL 2957991[nonpub. opn.]; *Escambia County Bd. 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, 8:04CV2657T24EAJ) 2005 WL 2850076 [nonpub. opn.]; but cf. *M.S.-G v. Lenape Regional High School Dist. Bd. of Educ.* (3d Cir. 2009) 306 Fed.Appx. 772, 775 [nonpub. opn.].) Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge. (*Assistance to States for the Educ. of Children with Disabilities & Preschool Grants for Children with Disabilities* (Aug. 14, 2006) 71 FR 46,540-46541, 46699.)

DISCUSSION

Student's amended complaint alleges five claims. In its motion, District challenges the sufficiency of Issues One, Three, and Five. All issues are discussed below.

In Issue One, Student asserts that District has failed to implement his individualized educational program, and gives two "instances" to support the claim. First, he asserts that he was "lost on the bus" by District. Secondly, he asserts that he was injured several times at school. In citing these events, Student adds the assertion that District failed to provide incident reports on Parent's request. District's motion contends that this claim lacks sufficient factual detail to allow it to investigate the issue and prepare a defense.

Issue One is insufficiently pled. It does not explain the nature of the problem or provide sufficient facts to allow the opposite party or the hearing officer to understand the issue to be tried. Student has not specified the IEP plan at issue by date, the part of the program which has not been implemented, and the manner in which implementation relates to the event and Student's education. Further, Student has not provided factual detail about the events given as instances in which the IEP plan was not implemented. Even though the notice requirements for pleading in IDEA cases are liberally construed, a complaint must meet a minimal factual standard. Lacking information about the circumstances of the events, such as date, location, and persons involved, District and the trier of fact have no means to sift out relevant facts from all events in the statutory period. The trailing assertion that District failed to provide incident reports upon request, if meant to be a claim of denial of parental participation in the IEP process, must also have supporting detail.

Student asserts in Issue Two that from 2015 through September 2017 Student has been given sweets to eat and that there have been resulting behavioral disturbances. Student contends that his IEP prescribes that he not been given sweets. This claim, too, fails to provide sufficient factual detail. For this claim to be heard, Student must identify the IEP wherein sweets are prohibited, provide some detail on who gave him the sweets and about what dates or occasions, and the consequences of their consumption to his education. Issue Two is inadequately pled.

The third claim in Student's amended complaint asserts that Student's mother was consistently prevented from observing Student's class and that she was therefor denied her right to participate in the formulation of Student's educational program. District asserts that this claim lacks sufficient facts about whether and when Parent requested permission to observe Student's class, whether and how District denied permission, and how this affected Parent's ability to participate in planning Student's education. District also asserts that OAH does not have jurisdiction to hear this claim, but that it is not properly raised in a notice of insufficiency. In all other respects, District is correct. Issue Three lacks sufficient detail and must be repled.

Student contends in Issue Four that his transfer from one class to another constituted a change of placement, and since this was done outside of the IEP process and without Parent's input it constitutes a denial of parental participation in the formulation of Student's educational program. This claim does not specify when Student was moved nor does it set out in what way the change represents a change in placement. District has not asserted that this claim is insufficiently pled, however, which suggests that the details given about the change are sufficient for District to determine when it took place and its significance. Student either was or was not transferred between the two teachers' classes, and it likely happened only once. Given that, the complaint provides sufficient detail. If Student is contending that his class change represents more than just a change of teacher, he should restate the issue and explain. Under the circumstances, Issue Four is sufficient.

Parent's advocacy of her right to participate in the IEP process is raised in Issue Five. She contends that a Principal of Student's school threatened to make complaints to Child Protective Services against her in retaliation for her activity in the IEP plan formulation and implementation process. District asserts that this claim is insufficiently pled because it does not show how the Principal's statements to Parent infringed upon Parent participation or denied Student a free and appropriate public education. Further, District contends that the phrasing of the claim is vague and confusing. While it is clear how threats to a parent in retaliation for her participation in the IEP process could impede her ability to participate and that doing so could be a violation of parent's rights under the IDEA, the issue as stated does not contain sufficient specifics about the alleged threats to enable District to respond. Student must replead this claim and include details, including when the threat or threats were made, who made them, what was threatened, and how those threats were connected to Parent's participation in the IEP process. Issue Five must be repled.

With regard to Issues One, Two, Three, and Five, Student fails to make a sufficiently clear and detailed allegation. Therefore, those claims are insufficient. Issue Four is sufficiently pled to put District on notice as to the basis of Student's claim.

As parent is not represented by an attorney, she 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 amended complaint is insufficiently pled under section title 20 United States Code 1415(c)(2)(D) as to Issues One, Two, Three, and Five.

2. Issue Four of Student's complaint is sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).

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

4. The second 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 second amended complaint, the matter will proceed solely on Issue Four.

DATE: November 9, 2017

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Chris Butchko
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CHRIS BUTCHKO
Administrative Law Judge
Office of Administrative Hearings

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