BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. NEWPORT MESA UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018120062 ORDER OF DETERMINATION OF PARTIAL SUFFICIENCY OF DUE PROCESS COMPLAINT AND GRANTING LEAVE TO AMEND

On November 30, 2018, Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming Newport Mesa Unified School District as a party). Newport Mesa received a copy of Student's complaint on November 27, 2018, and filed a Notice of Insufficiency on November 29, 2018.

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).

The complaint is deemed sufficient unless a party notifies the Office of Administrative Hearings 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. (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 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

[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).

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, *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 complaint alleges seven claims, six of which are insufficiently pled as they fail to provide a description of the problem regarding the identification, evaluation, or educational placement of Student, or Newport Mesa's provision or lack thereof of a free appropriate public education. Student's statement of the issues generally consists of a single assertion without any supporting facts. Student will be afforded an opportunity to file an amended complaint.

Student's Issue One asserts that Student's speech and occupational therapists missed several therapy sessions during the 2017-2018 school year. In addition to other proposed remedies, Student requests private sessions to make up for missed services. Although this issue does not specify which individualized education program is at issue, it provides Newport Mesa an awareness of the alleged problem such that it can prepare for a resolution session and due process hearing. Issue One is determined sufficient.

Issue Two states that Newport Mesa "did not allow the IEP process to unfold" and predetermined the June 21, 2018 IEP. Student fails to provide any supporting facts as to what portions of the IEP were predetermined and in what manner, or what Newport mesa was required to do and how it fell short. Issue Two is insufficiently pled. Issues Three and Four simply assert that IEP goals and services do not reflect Student's disability, without any reference to which IEP, which goals and services, and in what manner these did not address his unspecified disability. Student does not provide any information as to what his educational needs are or how his IEP goals and related services failed to meet his needs. Issues Three and Four are insufficiently pled.

Student's Issue Five alleges that Newport Mesa committed procedural violations from 2017 to the present without specifying what specific violations occurred and when, and how these denied Student a FAPE. This issue is insufficient. Issue Six asserts that from 2017 through the present, Newport Mesa "engaged in adverse tactics in an effort to refuse [Student's] services, including bullying, intimidation, [and] lying," and that district representatives showed bias and obstructed Parent's ability to advocate in the IEP process. Again, Student fails to provide any supporting facts to provide Newport Mesa with an understanding of the basis for this issue. Issue Six is insufficient. Finally, Issue Seven states that Student's "body apraxia" is not being addressed in his IEP goals and services. This issue fails to provide any details as to Student's specific needs, or identify the date of the IEP at issue, how the goals and services fail to meet these needs, and what goals and services he requires to receive a FAPE. As such, Issue Seven is insufficiently pled.

Student's Issues Two through Seven are insufficiently pled in that they fail to provide Newport Mesa with the required notice of a description of the problem and the facts relating to the problem. A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (20 U.S.C. §1415(b)(7)(A)(ii)(IV).) Many of Student's proposed resolutions are not well-defined. Further, he will have to establish that OAH has jurisdiction to grant any of his requested remedies, should he prevail at hearing. Even so, in relation to Issue One, Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

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

2. Issues Two through Seven of Student's complaint are 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).[2] The amended complaint shall be one

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

comprehensive document and include Issue One as well as any restatement of Student's Issues Two through Seven that he wishes to pursue.

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, the hearing shall proceed only as to Issue One.

DATE: December 5, 2018

DocuSigned by:
Theresa Ravandi
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THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings