BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SAN DIEGUITO UNION HIGH SCHOOL DISTRICT .	OAH Case No. 2019031116 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On March 27, 2019, Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming San Dieguito Union High School District. On May 7, 2019, Student filed a motion to amend her due process complaint. OAH granted the motion on May 9, 2019 and the matter was deemed filed the same day. On May 17, 2019 San Dieguito 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. (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.)

[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).

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 six claims in the complaint, some of which are sufficiently pled and some which are not. The issues are discussed below.

Issue One: San Dieguito contends Student's issue one is insufficient because it contains no supporting allegations or facts to demonstrate how or why Student was allegedly denied a free appropriate public education. Student's issue one states San Dieguito's offer of San Diego Center for Children denied Student a FAPE during the 2018-2019 school year. As resolution, Student is requesting placement at Winston where Parents notified San Dieguito they had placed Student in April 2019. Issue one is insufficient because it does not provide San Dieguito sufficient facts to put it on notice as to the basis of the issue. Student did not provide any information to explain what was wrong or inappropriate with San Dieguito's offer beyond the fact that it was not Parent's preferred placement. For these reasons, Issue One is insufficient.

Issues two, four and six: San Dieguito contents Student's issues two, four and six are all based on an allegation that San Dieguito did not implement Student's IEP. Student argues San Dieguitos' failure to fund Student's non-public school placement was a failure to implement the IEP. Student requests as resolution, San Dieguito be ordered to fund Student's placement at Winston. Student provided San Dieguito sufficient facts to allow it to respond to the complaint and participate in a resolution session and mediation. Thus, Issues two, four and six are sufficient.

Issue three: San Dieguito contends Student's issue three is insufficient because it contains no supporting details to the allegation and provides no explanation as to how this allegation describes a denial of FAPE. Student's resolution requests provide no clarity to this issue either. Student did not identify the type of transition plan it alleges San Dieguito did not provide. Student's issues three is vague and confusing and fails to provide San Dieguito with

the required notice of the problem and the facts related to the problem. Student's issue three is insufficient.

Issue five: San Dieguito contends Student's issue five is insufficient because it contains no supporting details to the allegations. Student's resolution requests also provided no clarity to the issue. Student did not identify any procedural violations that San Dieguito committed. Thus, Student's issue five fails to provide San Dieguito with the required notice of the problem and the facts related to the problem. Student's issue five is insufficient.

ORDER

1. Issues two, four, and six of Student's complaint are sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).

2. Issues one, three and five 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]

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 on Issues two, four, and six, in Student's complaint.

DATE: May 20, 2019

DocuSigned by:
Tiffany Gilmartin
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TIFFANY GILMARTIN
Administrative Law Judge
Office of Administrative Hearings

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