BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

MONTEREY PENINSULA UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2019120317

ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On December 6, 2019, Parent on behalf of Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, naming Monterey Peninsula Unified School District. On December 13, 2019, Monterey Peninsula Unified filed a timely Notice of Insufficiency as to the complaint. The Office of Administrative Hearings is referred to as OAH.

APPLICABLE LAW

The named parties have the right to challenge the complaint's sufficiency. (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:

1. Describes the problem relating to the proposed change regarding the Student's identification, evaluation, or educational placement, or providing the Student a free appropriate public education;
2. Includes facts about the problem; and
3. Includes a proposed resolution 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, *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

SUFFICIENCY OF STUDENT'S COMPLAINT

Student's complaint alleges 11 claims, all of which are insufficiently pled. The complaint merely lists 11 areas of disagreement between Student and Monterey Peninsula Unified, but fails to provide a sufficient description of alleged violations related to the proposed initiation or change concerning the identification, evaluation, or educational placement of Student, or the provision of a free appropriate public education to him. For example, the complaint states "Child Find Law broken" as an area of disagreement. However, the complaint fails to allege facts to explain the timing and circumstances of the alleged Child Find violation. The complaint fails to provide sufficient facts regarding each area of disagreement to provide Monterey Peninsula Unified with an awareness and understanding of the claims against it. Accordingly, the complaint is insufficient.

MEDIATOR ASSISTANCE FOR NON-REPRESENTED PARENTS: A parent without 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 complaint is insufficiently pled under section title 20 United States Code 1415(c)(2)(D).
2. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II). The filing of an amended complaint will restart the applicable timelines for a due process hearing.
3. 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.
4. If Student fails to file a timely amended complaint, the complaint will be dismissed.
5. All dates previously set in this matter are vacated.

DATED: December 16, 2019

DocuSigned by:
Rommel P. Cruz
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Rommel P. Cruz
Administrative Law Judge
Office of Administrative Hearings