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 No. 2015120374 ORDER DETERMINING COMPLAINT IS SUFFICIENT

On December 8, 2015, Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming Monterey Peninsula Unified School District as respondent. On December 16, 2015, Monterey filed a Notice of Insufficiency as to issues two, three, and six in 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).

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).)[2]

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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] 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). Often there is insufficient time to complete the NOI

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, *supra*, at p. 34.) 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. (*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

The facts alleged in Student's complaint are sufficient to put Monterey on notice of the issues forming the basis of the complaint. Student's complaint identifies the issues and adequate related facts about the problem to permit Monterey to respond to the complaint and participate in mediation.

Specifically, regarding issue two, Monterey asserts that Student failed to identify the specific district assessments that it challenges. The issue Student raised alleges that Monterey failed to assess Student in all areas of need. The facts supporting this issue identify those areas as speech and language (bilingual), a "more in-depth" behavior assessment, adaptive physical education, motor skills, and mental health. This is sufficiently clear to put Monterey on notice regarding Student's allegation.

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process in expedited hearings. This case raises expedited issues and non-expedited issues and has been designated as a dual case. In this case, the NOI primarily challenges the sufficiency of the non-expedited issues. Additionally, the matter can be timely addressed.

Student's issue three alleges that Monterey denied Student a free appropriate public education by failing to tailor an appropriate educational program to meet his individual unique needs. While this issue is stated generally, the facts in support of this contention make clear that Student challenges the appropriateness of his current educational home/hospital placement, his former placement in the autism class at Los Arboles prior to home/hospital, and his proposed residential placement at Fred Finch. Monterey is correct that Student did not include the specific dates of the individual education programs that offered these placements. That degree of specificity can be elicited during the prehearing conference in this matter. The facts, as pled, are sufficient to put Monterey on notice of Student's challenge to the three specific placements identified in the complaint.

Monterey's final challenge is to Student's sixth issue regarding Monterey's failure to comply with parent's records request. Student's complaint identifies the specific documents that it alleges were not provided. Monterey argues that the issue is insufficiently pled because Student failed to allege how this failure resulted in a denial of FAPE. Student, however, is not obligated to provide that level of detail in the complaint to put Monterey of notice of Student's issue or the facts supporting the issue.

In light of the forgoing, Student's issues two, three, and six are sufficient.

ORDER

1. The complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).

2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

DATE: December 18, 2015

/s/

JOY REDMON
Administrative Law Judge
Office of Administrative Hearings