BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. MORGAN HILL UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017090329 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On September 8, 2017, Student filed a due process hearing request[1] (complaint) with the Office of Administrative Hearings naming Morgan Hill Unified School District. However, it did not serve the complaint on Morgan Hill when it was filed. Instead it served on Morgan Hill on September 11, 2017, according to a proof of service filed with OAH on that date. On September 26, 2017, Morgan Hill 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

The facts alleged in Student's complaint are sufficient to put Morgan Hill on notice of the issues forming the basis of the complaint. Student alleges that he has been the victim of bullying since January 2017. He does make multiple claims and proposed resolutions that are beyond the jurisdiction of OAH, such as asking that OAH order a consent decree to address the bullying. However, one claim is within the jurisdiction of OAH, the claim that Student has suffered physical and emotional injury as the result of the alleged bullying, and now suffers from anxiety, panic attacks, depression, and an inability to focus on school tasks, among other things. As a result, he asks that OAH find that Morgan Hill has not complied with its child find obligation.

Morgan Hill has been put on notice that Student has allegedly been bullied since January 2017, he has suffered from physical and emotional trauma since that time, and although Morgan Hill had knowledge of the bullying and the effect on Student, it failed to offer to assess Student in a timely manner. This is an issue that is within OAH's jurisdiction, and thus Student's complaint identifies the issues and adequate related facts about the problem to permit Morgan Hill to respond to the complaint and participate in a resolution session and mediation, and to prepare for hearing. Therefore Student's statement of the child find claim is sufficient.

Student's proposed resolutions ask that OAH order Morgan Hill to: 1) assess Student in the areas of emotional, social, cognitive and behavioral functioning; 2) comply with a consent decree for Student's school to address the issue; 3) train Student to cope and manage gang related activity; 4) provide counseling for Student to address post-traumatic stress disorder; 5) create a safety plan for Student; and 6) provide Student with two years of compensatory education, or in the alternative; 7) pay for Student to attend private school for two years. A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. Although, as noted above, OAH may not

have the authority to order each proposed resolution, Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

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: September 27, 2017

DocuSigned by:

Rebecca Freie

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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings