BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. PALM SPRINGS UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018010037 ORDER DETERMINING COMPLAINT INSUFFICIENT AS PLED

On January 2, 2018, Parent on behalf of Student filed a due process hearing request[1] (complaint) with the Office of Administrative Hearings naming Palm Springs Unified School District. On January 19, 2018, District 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).

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).) Student served District with her complaint by United States mail. District states in its notice of insufficiency that it received the complaint on January 4, 2018. Based on the date District received the complaint, its notice of insufficiency is timely filed.

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.

[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).

§ 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

Student's complaint contends that her parents and her attorney do not believe that she is being offered a free appropriate public education. Student contends that she is not making adequate progress academically. However, her complaint fails to state why and how the amount of academic services District provides is not adequate. Student next contends that she is making inadequate progress in speech and that the 120 minutes per month District provides is insufficient. Student fails to state why that amount of progress is insufficient and on what basis she believes she needs more. Student also states that she has difficulty socializing and therefore must have other developmental delays (presumably more delays than those acknowledged by District) but Student fails to state what other programming or services she requires that District has not provided.

Additionally, although the one-page factual background portion of Student's complaint states that Student has returned from school with injuries, and that her classroom is not safe for her, Student fails to state when those injuries occurred and what the injuries were. Further, although Student refers to the injuries in the background portion of the complaint, she fails to reference the injuries in the portion of her complaint entitled "Issues and Concerns." It is therefore unclear whether Student contends that she has been denied a FAPE because of the injuries, and intends to raise that as a separate issue for hearing.

For these reasons, Student's complaint is insufficiently pled in its entirety in that it fails to provide District with the required notice of a description of the problems she means to raise for hearing and the facts relating to the problems.

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).[2]

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.

DATE: January 24, 2018

DocuSigned by:
Darrell Lepkowsky
A228F8201132499...

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings

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