BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017071091
v.	ORDER OF DETERMINATION OF INSUFFICIENCY OF STUDENT'S FIRST AMENDED DUE PROCESS COMPLAINT AS TO HOPE ELEMENTARY SCHOOL DISTRICT
SANTA BARBARA UNIFIED SCHOOL DISTRICT AND HOPE ELEMENTARY SCHOOL DISTRICT.	

On August 30, 2017, Office of Administrative Hearings granted Student leave to file a Due Process Hearing Request (first amended complaint) naming Santa Barbara Unified School District and Hope Elementary School District. On September 12, 2017, Hope Elementary School District filed a Notice of Insufficiency as to Student's complaint. Hope Elementary's Notice of Insufficiency also contained, in the alternative, a request to dismiss Student's first amended complaint as to Hope Elementary, or in the alternative, a request to bifurcate Student's amended complaint for determination of the statute of limitations.

Neither Student nor Santa Barbara Unified School District filed an opposition or response to any of Hope's requests for relief.

APPLICABLE LAW FOR DETERMINATION OF SUFFICIENCY OF COMPLAINT

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.)

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 first amended complaint alleges facts which contend Hope Elementary was responsible for Student's special education and related services for the 2010-2011 and 2011-2012 school years, during which time Student contends Hope Elementary failed to provide Parents with Spanish language interpreters and/or Spanish translations of special education documents. Student alleges he attended schools in the Santa Barbara Unified School District at all other times between 2007 and 2017. Each claim in the first amended complaint, identified as paragraphs 58 through 65 of the first amended complaint, is insufficiently pled as to Hope Elementary, as discussed below.

Paragraphs 58 fails to specifically allege which school district is alleged as "Defendant", when such alleged violation occurred or how Hope Elementary was responsible for developing an individualized transition plan.

Paragraph 59 fails to specifically allege which school district is alleged as "Defendant", when such alleged violation(s) occurred, and which individualized educational assessment(s) is alleged. Student further fails to provide factual allegations regarding Hope Elementary to support his conclusion that failure to provide Spanish translations resulted in a denial of FAPE.

Paragraph 60, references "Defendants" in the plural, but fails to indicate when or how this alleged violation occurred. With regard to Hope Elementary specifically, Paragraph 60 fails to provide a factual basis how Hope Elementary failed to accommodate or support Student's disability, when it occurred, which IEP(s) was involved, or how the alleged claim affected Student's education.

Paragraph 61 states "As a result, Defendants systematically denied parent participation and failed to provide Student with appropriate services and supports." Paragraph 61 appears to be a conclusion drawn from Paragraphs 58 through 60. With regard to Hope Elementary, Student fails to indicate when Hope Elementary failed to provide

Student with appropriate services and supports, which specific IEPs were involved, and how or why Hope Elementary's actions or inactions denied Student a FAPE.

Paragraph 62 fails to specifically allege which school district is alleged as Defendant, when such alleged violation(s) occurred, and which individualized educational assessment(s) is alleged. Student further fails to provide factual allegations regarding Hope Elementary to support a conclusion that Hope Elementary was requested to assess or had an obligation to assess Student or that any assessments were ignored.

Paragraph 63 again references "Defendants" in the plural, but fails to indicate when or which districts failed to assess Student, and in what areas of suspected disability. With regard to Hope Elementary specifically, Paragraph 63 fails to provide a factual basis how Hope Elementary was obligated to assess Student, or what constitutes the "appropriate time."

Paragraph 64 fails to specifically allege which school district is alleged as "Defendant", when such alleged violation occurred and which IEP(s) failed to provide Student ESY.

Paragraph 65, fails to specifically allege which school district is alleged as "Defendant", when such violation allegedly occurred, what areas of need were omitted, which IEP(s) failed to provide necessary goals, and how Student was denied a FAPE.

Student's first amended complaint is insufficiently pled in that it fails to provide Hope Elementary School District with the required notice of a description of the problems and the facts relating to the problems.

ORDER

1. Student's complaint as to Hope Elementary School District 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).[1]

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 as to Hope Elementary School District only.

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

5. As Student's first amended complaint has been found insufficiently pled as to Hope Elementary School District, the alternative requests for dismissal of the first amended complaint and/or bifurcation of the issue of the statute of limitations as to Hope Elementary School District are moot.

6. All dates previously set in this matter remain in full force and effect as to Santa Barbara Unified School District.

DATE: September 26, 2017

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Peter Paul Castillo for
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JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings