BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2019050565
v.	ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT
LOWELL JOINT SCHOOL DISTRICT.	

On May 13, 2019, Student filed a due process hearing request[1] (complaint) with the Office of Administrative Hearings naming Lowell Joint School District. On May 17, 2019, Lowell 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).)

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.)

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[1] A due process hearing request 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

Lowell's notice of insufficiency claims that Student's complaint lacks specific, necessary, and required detail to support his allegations that would allow it to prepare an adequate defense. Thus, Lowell argues that Student's complaint is insufficient.

Student's complaint alleges three issues, all of which are insufficiently pled as discussed below.

Issue number one contends that Lowell failed to provide Student with individualized therapy and instead, offered group therapy. Student, however, fails to identify a particular IEP or IEP's, a school year, a time period, or the type of therapy at issue. Without this information, the complaint fails to state sufficient facts that give Lowell an awareness and understanding of the issue. Thus, issue number one is insufficiently pled.

Student alleges in issue number two that he requires more than one session of speech therapy. Again, Student fails to identify which IEP, time period, or school year he is referencing, and therefore fails to plead sufficient facts to support his claim as currently written.

Finally, Student alleges that Lowell failed to consider Student's apraxia, however, no assessment was identified, school year, IEP, timeframe, or further information as to why Lowell should have suspected apraxia. Without facts, it is unclear that any conduct on the part of Lowell relates to a denial of FAPE. Accordingly, the contention is insufficiently pled.

A parent who is not represented by an attorney may request that the Office of Administrative Hearings provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in the complaint. Parent is encouraged to contact

OAH for assistance if he intends to amend the due process hearing request on behalf of Student.

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. All dates previously set in this matter are vacated. OAH shall issue a new scheduling order following the filing of an amended complaint.

5. If Student fails to file a timely amended complaint, the case will be dismissed.

DATE: May 20, 2019

DocuSigned by:
Cynthia Fritz
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CYNTHIA FRITZ
Administrative Law Judge
Office of Administrative Hearings

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