BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. KLAMATH TRINITY JOINT UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017090036 ORDER GRANTING DISTRICT'S NOTICE OF INSUFFICIENCY

On August 31, 2017, Parent on behalf of Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming Klamath Trinity Joint Unified School District. District did not become aware of the complaint until it received OAH's September 5, 2017 scheduling order, on or about September 11, 2017. District did not receive Student's complaint until its counsel contacted OAH and requested a copy on September 20, 2017. On September 22, 2017, District filed a Notice of Insufficiency 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

[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).

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.) A complaint is also required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (20 U.S.C. §1415(b)(7)(A)(ii)(IV).)

DISCUSSION

Although the complaint was filed with OAH on August 31, 2017, District had no notice of the complaint until September 11, 2017, the date it received OAH's scheduling order. District did not receive a copy of the complaint until September 20, 2017. These facts were sworn to under the penalty of perjury by District's attorney without any contradictory evidence. Therefore, District's explanations were credible; and its filing of the notice of insufficiency on September 22, 2017, is considered timely.

The complaint stated that Student could not read or write her name, got "Fs", and a parental request for help. The complaint also stated "Help I need to know what I can do" and "Getting the school to get the help" as proposed resolutions.

These details are insufficiently pled to put District on notice of the issues forming the basis of Student's complaint. The complaint was unclear if Student had already qualified for special education and her inability to read or write resulted from an inappropriate offer of placement and/or services from the last individualized education program; or if Student had not yet qualified for special education, and Student's reading and writing difficulties resulted from District's failure to assess, and/or failure of District's child find obligations. Details regarding the basis surrounding Student's education need to be included in the complaint *e.g.* the last IEP date; the basis of the special education qualification category; whether the issues include District's failure to properly assess Student's special needs, and/or District's failure

to identify Student as a special needs child. Accordingly, District's notice of insufficiency is granted.

MEDIATOR ASSISTANCE FOR NON-REPRESENTED PARENTS: 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 a complaint.[2] Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

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).[3]

3. The amended complaint shall comply with the requirements of Title 20 United States Code 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: September 25, 2017

DocuSigned by:
Sabrina Kong
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SABRINA KONG
Administrative Law Judge
Office of Administrative Hearings

[2] Ed. Code, § 56505.

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