BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2018121031
v.	ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT; ORDER DENYING MOTION TO DISMISS AS MOOT
KONOCTI UNIFIED SCHOOL DISTRICT.	

On December 28, 2018, Parent on behalf of Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming Konocti Unified School District. On January 16, 2019, Konocti filed a Notice of Insufficiency as to Student's complaint and a Motion to Dismiss the complaint based on a lack of proper service.

Konocti contends that it was not served with Student's complaint, and did not receive a copy of the complaint until OAH provided it on January 16, 2019. Konocti's NOI and Motion to Dismiss are supported by two sworn declarations indicating that neither Konocti nor its attorney was served with the complaint. The statement of service attached to Student's complaint indicates that Parent served Konocti via first class mail, but fails to include the address of service. The statement of service further indicates service by facsimile transmission but does not identify a person or educational agency served in that manner.

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).)

[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).

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.)

Under special education law, a party initiating a due process hearing request "shall provide the other party to the hearing with a copy of the request at the same time as the request is filed with (OAH)." (Ed. Code, § 56502, subd. (c)(1).)

DISCUSSION

Sufficiency of the Complaint

Student's proof of service did not establish that Konocti was served with the complaint. No address was provided in the proof of service and no agency was identified for service via facsimile transmission. The sworn declarations in support of Konocti's NOI and Motion to Dismiss further corroborates the lack of proper service. Konocti received from OAH a copy of the complaint on January 16, 2019, and therefore, Konocti's Notice of Insufficiency was timely filed.

Konocti's NOI contends that Student's complaint is insufficiently pled in its entirety, as the complaint fails to provide sufficient information to provide Konocti with an understanding as to the claims Student is raising, the nature of the specific allegations against

Konocti, and the proposed resolutions to the claims. As a consequence, Konocti argues that it is unable respond to the complaint or prepare a defense to Student's claims.

Student's complaint lists two problems and two proposed resolutions. The first problem, Problem 1, simply indicates that Student "needs an aide to be successful in school." No further description of the problem is provided in the complaint. It fails to provide a description of the problem, identify when the problem occurred, and how Konocti allegedly failed to provide Student an aide. Problem 1 does not identify which Individualized Education Program, if any, Konocti failed to appropriately develop or implement, nor does Problem 1 identify a time period as to when Konocti should have provided Student an aide. Hence, Problem 1 as pled is insufficient.

The complaint's second problem, Problem 2, alleges that Student "gets speech therapy with a group once a week." No further description of the problem is provided in the complaint. It fails to provide a description of the problem as it relates to group speech therapy, identify when the problem occurred, and how Konocti allegedly failed to provide Student with appropriate speech therapy. Therefore, Problem 2 is insufficiently pled.

Student's proposed resolutions requests that Student be provided a one-to-one aide and individual therapy. The request for individual therapy is listed as a proposed resolution to Problem 2, which can be reasonably interpreted as a request for individual speech therapy. A complaint is 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).) The proposed resolution stated in Student's complaint are sufficiently defined requests and meet the statutorily required standard of stating a resolution to the extent known and available to Student at the time.

Motion to Dismiss

Konocti contends that the complaint should be dismissed as Student has not served the complaint on Konocti. Although Konocti established it was not served the complaint by Student, Konocti has failed to establish that the complaint should be dismissed. The appropriate remedy is to reset the procedural timelines when District is properly served the complaint by Student. However, the issue of dismissal or the resetting of the procedural timelines is moot, as the complaint has been deemed insufficient, resulting in the vacating of the dates in this matter. Therefore, Konocti's motion to dismiss the complaint is denied as moot.

MEDIATOR ASSISTANCE FOR NON-REPRESENTED PARENTS: A parent who is not represented by an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. (Ed. Code, § 56505.) 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).[2] Student shall serve Konocti with a copy of the complaint using a method such a certified mail that provides proof that the complaint was sent to Konocti.

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 18, 2019

DocuSigned by:
Rommel Cruz
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ROMMEL P. CRUZ
Administrative Law Judge
Office of Administrative Hearings

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