BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017050631
v.	ORDER OF DETERMINATION OF INSUFFICIENCY OF STUDENT'S DUE PROCESS COMPLAINT AS TO ISSUE A
EAST SIDE UNION HIGH SCHOOL DISTRICT AND SANTA CLARA COUNTY OFFICE OF EDUCATION	

On May 03, 2017, Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming East Side Union High School District and Santa Clara County Office of Education. On May 12, 2017, East Side filed a Notice of Insufficiency as to Issue A of Student's complaint. On May 18, 2017, Santa Clara County filed a Notice of Insufficiency as to Issue A of 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) and (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. §

[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 was filed on May 3, 2017. [2] East Side's Notice of Insufficiency was dated, filed with OAH and served, on May 12, 2017. Santa Clara County's Notice of Insufficiency was dated, filed with OAH and served, on May 18, 2017. Respondents' Notices of insufficiency were each timely filed within 15 days of Respondents' receipt of Student's complaint. Student's contention that Santa Clara County's Notice of Insufficiency was untimely is without merit.

Student's complaint stated three issues, A, B, and C. Issues B and C were not alleged to be insufficient and are not at issue in this order. Respondents assert that Issue A, lacking specific school years, should be dismissed as insufficient because it does not state facts sufficient to allow them to prepare for a resolution session or mediation.

Student's issue A is stated as follows:

A. For each school year permitted by statute:

[2] Although Student's Proof of Service indicates that the complaint was filed by facsimile on May 2, 2017, OAH received Student's complaint on May 3, 2017. It is assumed that Respondents also received the facsimile at the same time as OAH

1. District/COE failed to offer an IEP reasonably calculated to enable [Student] to make progress in light of her circumstances,

2. inappropriately and unreasonably limited [Student's] instructional time; and

3. failed to offer physical therapy.

Student's complaint as to Issue A alleges claims which are insufficiently pled in that they fail to provide Respondents with the required notice of a description of the problem, the facts relating to the problem, and the timeframe of the alleged violations in a way that gives Respondents notice which is sufficient to allow them to prepare for a resolution session or mediation.

Student's allegations set forth in Student's Issue A were also included in Students' Issues B and C, which were not challenged by Respondents as insufficient because Issues B and C alleged violations during the specific school years of 2015-2016 and 2016-2017, specific IEP's, and facts for the alleged violations. In contrast, Student's complaint regarding Issue A, is silent as to a time frame and, instead states, "For each school year permitted by statute" and references case law which allows for remedies for special education violations predating the tolling of the statute of limitations.

Student's complaint contains a general narrative history of Student's educational background which does not include a sufficient basis for the allegations in Issue A, for the "many years" she has been in school. Student's citations of case law discussing statutes of limitations allowing for remedies predating the tolling of the statute of limitations does not cure the insufficiency of Student's pleading of Issue A. Therefore, Student has failed to state sufficient facts supporting this claim, and the claim is insufficient.

ORDER

1. Student's Issue A of her 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 U.S.C. section 1415(b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.

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

4. If Student fails to file a timely amended complaint, Issue A of Student's complaint will be dismissed.

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues B and C in Student's complaint.

IT IS SO ORDERED

DATE: May 19, 2017

DocuSigned by:
Rita DeFilippis
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RITA DEFILIPPIS
Administrative Law Judge
Office of Administrative Hearings