BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ANAHEIM ELEMENTARY SCHOOL DISTRICT.	OAH Case No. 2018090697 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On September 20, 2018, Parent on behalf of Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming Anaheim Unified School District as respondent. On October 2, 2018, Anaheim 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).

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,

[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).

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.)

Anaheim asserts that it is unable to respond to the complaint or prepare a defense because Student has failed to sufficiently plead their claims. Claims pled in special education proceedings are liberally construed to effect the broad remedial purpose of the act. While the request for due process is difficult to read, some of the individual "complaints" in Student's request for due process do articulate claims when read as a whole. The standard only requires that Student state a problem "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" and stating resolutions to the extent known by the claimant at the time the request was filed. Remedies are ultimately determined by the Administrative Law Judge hearing the case; thus proposed resolutions are not part of the basis of claims. Nor are proposed resolutions subject to a determination of sufficiency.

Claims that are Sufficient

The following "complaints" include facts sufficient to put Anaheim on notice of the issues forming the basis of the complaint. Student's complaint identifies the issues and adequate related facts about the problem to permit District to respond to the complaint and participate in a resolution session and mediation:

COMPLAINT NUMBER 1:[2]

Student alleges that, on or around November 1, 2016, Parents were denied the opportunity for meaningful participation in an IEP team meeting by being denied the opportunity to ask questions.

COMPLAINT NUMBER 2:

Student alleges that, on or about, November 1, 2016, Student was denied speech and occupational therapy services in her Home Hospital placement.

[2] Nothing in this order prevents the ALJ from further refining the issues during the Prehearing Conference.

COMPLAINT NUMBER 4:

Complaint number four alleges that between the dates of April 17, 2017 through March 20, 2018, Anaheim failed to comply with an order in a Decision issued by OAH on March 13, 2017.

COMPLAINT NUMBER 9:

Complaint number five alleges that Anaheim failed to hold IEP team meetings that Parents requested between the dates of November 1, 2016 and June 15, 2018.

Claims that are Not Sufficient

COMPLAINTS NUMBER 3, 6, AND 7:

The allegations of complaint number three are unintelligible. It is unclear whether Student is claiming her home hospital placement is inappropriate or whether Parents are alleging a denial of meaningful participation in the determination of a needed change in placement. The allegations of complaints number six and seven are identical to number three with the exception of identifying a different date of occurrence.

COMPLAINT NUMBER 5

The allegations of complaint number five are unclear and the issue is insufficiently pled.

COMPLAINT NUMBER 8:

The allegations of complaint number eight are confusing. Some of the same paragraphs that were included in complaints number 3, 6, and 7 are included in this claim. It is unclear whether Parents are claiming that Student's placement is appropriate or not appropriate. The claim mentions both assessment and placement but the allegations against Anaheim are unintelligible.

The allegations in complaints number 3, 5, 6, 7, and 8 are insufficiently pled in that they fail to provide Anaheim with the required notice of a description of the problem and the facts relating to the problem in a way that is understandable and allows Anaheim to prepare a defense.

ORDER

1. Issues 1, 2, 4 and 9, of Student's complaint are sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).

2. Issues 3, 5, 6, 7, and 8 of Student's complaint are insufficiently pled under title 20 United States Code section 1415(c)(2)(D).

3. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).[3]

4. 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]

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues 1, 2, 4, and 9, in Student's complaint.

DATE: October 4, 2018

DocuSigned by:
Penelope S. Pahl
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PENELOPE S. PAHL
Administrative Law Judge
Office of Administrative Hearings

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

[4] 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.