BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. WILLIAM S. HART UNION HIGH SCHOOL DISTRICT.	OAH Case No. 2018120035 ORDER OF DETERMINATION OF INSUFFICIENCY OF DUE PROCESS COMPLAINT

On December 3, 2018, Parent on behalf of Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming William S. Hart Union High School District. On December 6, 2018, William S. Hart 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, *supra*, at p. 34.) The pleading requirements should be liberally construed in light of the

[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).

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

William S. Hart contends Student's complaint is insufficient because it fails to set out sufficient facts or information to support Student's claims. Specifically, William S. Hart alleges this due process complaint is the result of a family feud between Student's Mother and Student's aunt and Mother and a former school district.

In the complaint, Student alleges William S. Hart discriminates against Mother and Student. Student also alleges William S. Hart colludes with Student's aunt and another school district. The complaint further alleges daily classroom updates and classroom news were not provided to Mother. Finally, the complaint alleges Student's instructional aide is rude to his Mother and refuses to speak to her. Student alleges these actions contributed to a dangerous environment and violates Mother's right to participate in her son's education.

Student's complaint is insufficiently pled. The complaint fails to state how Student's allegations of discrimination, collusion, and communication issues with personnel at William S. Hart denied Student a free appropriate public education. Student's complaint of discrimination and collusion against Student and Mother is made without any supportive facts beyond Mother's conclusory statement. Student's allegations that the failure to provide classroom news and daily updates, and the refusal of the instructional aide to speak to Mother is also a conclusory statement devoid of any specific facts as to when these allegations allegedly occurred and any allegation that Student or Mother is entitled to this information under an individualized education program Finally, the complaint fails to state how Mother's ability to meaningfully participate in Student's education was impeded.

William S. Hart raises an objection to Student's proposed resolution as well. Student's proposed resolution requests a new classroom placement and instructional aide. William S. Hart argues Student's proposed resolution is outside of OAH's jurisdiction as it relates to personnel issues. 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 only determination to be made upon the filing of an NOI is the sufficiency of the complaint on its face. Jurisdictional contentions may be presented at hearing as an affirmative defense, or addressed in a Motion to Dismiss. Student's proposed resolution is a new instructional aide and classroom placement. The proposed resolution

stated in Student's complaint is well-defined and Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

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]

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: December 7, 2018

DocuSigned by:
Tiffany Gilmartin
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TIFFANY GILMARTIN
Administrative Law Judge
Office of Administrative Hearings

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