BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018050993 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On May 21, 2018, Student filed a due process hearing request[1] (complaint) with the Office of Administrative Hearings naming Los Angeles Unified School District. On June 6, 2018, Los Angeles 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 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

[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).

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 Individuals with Disabilities Education Act 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 Claims

Student's complaint alleges six claims which are all insufficiently pled as discussed below.

Issue Number One: Parent alleges: " LAUSD have [sic] not provided a F.A.P.E. since my child enrolled into LAUSD. My child suffered gastrointestinal bleeding as the LAUSD staff was threatening the children with consequences if they wanted to use the restroom. Plus LAUSD were mismanaging funds they got from the State to Build [sic] a bathroom at Dodson MS. There was only one toilet for over 800 males [sic] students, and a lack of supervision. I sued LAUSD in Federal Court, and they had to build a new bathroom, and make ADA compliance changes at Dodson MS. However, my child was retaliated on by the Defendants for over 21/2 years. 4 out of the 6 Defendants no longer work at Dodson MS. My child was harassed & bullied & so was I."

Issue Number Two: Parent alleges: "I will not be silenced! I am my child's chief advocate! I will advocate for my child, and I will not allow anyone to harm my child! I will get justice for the wrongs that were done to my son's life, and wellbeing! My son was denied due process! My son will be heard! His life is just as important as anyone elses [sic] life!"

Issue Number Three: Parent alleges: "A day after trial I had to take my son to the doctors as he became very ill from stress as LAUSD's defense counsel badgered me in front of my son about being a dv victim, and was shaming me on the stand going into every detail.

About how I was a dv victim when I was pregnant with the minor. Things he never needed to be aware of. There was misconduct at trial, and I have reported the magistrate to the 9th circuit chief judge. My son was home ill for almost 10 days with a fever that spiked to 104 degrees as his immune system crashed. Then days after he returned to school LAUSD staff said they were going to end his counseling June 2018, and they sent home county referrals."

Issue Number Four: Parent states that: "Several defendants lied on the stand. Especially a Dr. Flowers LRE. Dr. Flowers tried to tell me my son could never attend the Magnet Olguin campus as he has an IEP. Dr. Flowers admitted to me that she was jealous as her daughter did not win the lottery to get in. Instead her daughter got into King Drew Magnet. Kids can only get into magnet schools on a lottery computer based system. Dr. Flowers would not fix my son's schedule in the beginning of 9th grade. So the minor missed the first two months of school. I had to file for due process in order for her to fix his schedule. Then she went into trial, and lied on the stand saying the minor was getting D's, and F's. Now the minor's grades are slipping, because he is giving up. These people keep lying to cover their asses, and lying on reports. This is the 4th or 5th due process I have filed: 2017030451, 2017010100, 2017080891, and federal lawsuit cv-16-02358."

Issue Number Five: Parent alleges, "The state is responsible for protecting its wards!"

Issue Number Six: Parent alleges that: "LAUSD had Dr. Wells from IDR try to get me to sign a paper to waive our rights in order to keep my son's counseling. But then it says they may try to take my sons [sic] aide at the next IEP meeting."

Student fails to provide Los Angeles with the required notice of a description of the problem and the facts relating to the problem. Student mentions FAPE but does not specify any facts regarding any act or omission by Los Angeles related to "proposed initiation or change concerning identification, evaluation, or educational placement, or the provision of a FAPE." The complaint is silent as to what individualized education programs, services, accommodations, goals, assessments or placement is a violation of FAPE and what should have been provided. There are no school years or dates that would otherwise notify Los Angeles of such, and no specific facts related to the allegations against the school district to understand if the claims are actionable under the IDEA or state law.

Further, Student does not mention any specific incidents, action or IEP to connect it with any violation of FAPE. Parent mentions prior litigation and due process hearings against Los Angeles, but it is unclear how that relates to any FAPE violations. The allegations related to bullying, retaliation and physical harm are general without any specific incidents, timeframes, or facts that allege that they are related to a denial of FAPE.

There are no contentions that Los Angeles violated any special education laws, or any specificity regarding any act or omission by Los Angeles related to the IDEA and FAPE. Thus, Student's complaint is insufficiently pled.

Student's Resolutions

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 resolutions stated in Student's complaint are neither well-defined nor connected to remedying FAPE, and fails to request specific relief from Los Angeles except for placement in a private school across the street from Student's residence.

Because of this, the complaint fails to state sufficient facts that give Los Angeles an awareness and understanding of the issues and proposed resolutions as they pertain to it such that it can prepare for a resolution session, mediation and hearing. Thus, the complaint is insufficiently pled.

A parent who is not represented by an attorney may ask 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.) Parent is encouraged to contact OAH for assistance if she intends to amend the 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.

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

5. All dates previously set in this matter are vacated.

DATE: June 8, 2018

DocuSigned by:
Cynthia Fritz
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CYNTHIA FRITZ
Administrative Law Judge
Office of Administrative Hearings