BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. STOCKTON UNIFIED SCHOOL DISTRICT.	OAH Case No. 2019050088 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On May 1, 2019, Parent on behalf of Student (Student) filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming Stockton Unified School District as respondent. On May 8, 2019, Stockton 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.)

Student's complaint alleges four claims, which are all insufficiently pled as discussed below. The claims fail to provide Stockton with the required notice of a description of the problem and the facts relating to the problem.

Problem Number 1:

Problem number one alleges an injury to Student that occurred in September of 2017 but does not state how this incident violates the IDEA. If read in conjunction with the proposed resolution, the complaint seeks assistance with "maladaptive defensive behavior they have now created." However, the complaint does not describe the conduct in question or state what actions Parent is asking Stockton to take.

Problem Number 2:

Problem number two alleges that in August of 2018 Mother had to request an emergency Individual Education Plan team meeting because of "concerns regarding my son's education and welfare." However, the complaint does not alleged what the concerns were. Mother further alleges that in the IEP meeting, which was convened per her request, she discovered that Student did not have a behavior plan and that the teacher was inadequately trained. Mother goes on to state that, after the meeting, it "seem the situation became worse and my son was provoke into this aggressive defensive maladaptive behavior." (*sic)* No facts describing dates or incidents are provided. Other allegations of intent to force Student into a non-public school and refusal to teach Student due to Mother's complaints are included but no facts supporting these allegations are provided. Nor are any dates on which the incidents occurred. The maladaptive behaviors are not described nor are dates provided on which Student demonstrated those behaviors. Parent ends by alleging that the school released confidential information about Student to another parent but without specificity as to the date when this happened or what type of information was disclosed. It appears as though part of the narrative in the complaint may have been cut off during printing.

Problem Number 3:

Problem number three sets forth a series of statements that complaints filed with the district in October of 2018; however, the specifics about the complaints are not included in the allegations. It is unclear what Parent is alleging occurred, how the Individuals with Disabilities in Education Act or California special education laws have been violated or what kind of remedies would be available under the IDEA or California special education laws for the concerns Parent has.

Problem Number 4:

Problem number four alleges that Stockton's Autism program is not living up to its mission visions and values". Parent generally refers to an "emergency move" to a different school location due to "the situations taken place at Marshall School" but Parent does not describe what happened with any clarity.

Mediator Assistance Available to Help With Writing the Complaint

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

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

dismissed.

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

DATE: May 13, 2019

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