BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

TUSTIN UNIFIED SCHOOL DISTRICT

OAH CASE NUMBER 2020080847

ORDER OF DETERMINATION OF INSUFFICIENCY OF DUE PROCESS COMPLAINT

SEPTEMBER 15, 2020

On August 28, 2020, Parent on behalf of Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Tustin Unified School District. Student failed to include a proof of service with the complaint. Tustin received the complaint on September 8, 2020. On September 14, 2020, Tustin filed a Notice of Insufficiency as to the complaint.

APPLICABLE LAW

The named parties have the right to challenge the complaint's sufficiency. (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: (1) describes the problem relating to the proposed change regarding the Student's identification, evaluation, or educational placement, or providing the Student a free appropriate public education; (2) includes facts about the problem; and (3) includes a proposed resolution 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 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.)

On September 28, 2017, the attorney general issued an opinion letter which considered whether the Individuals with Disabilities Education Act, the implementing regulations, and/or the California Education Code authorized a party to special education due process proceedings to be represented by a person that was not an active member of the California State Bar. The attorney general's opinion concluded that these laws did not authorize parties to a special education due process hearing to be represented by a person that is not an active member of the California State Bar in due process hearings. (100 Ops. Cal. Atty. Gen. 19 (2017).)

DISCUSSION

Student's complaint fails to state any facts specific to Student or his educational program in Tustin. Instead, Student makes general allegations that Tustin failed to implement Student's Individualized Education Program, referred to as an IEP, since March of 2020, failed to provide Parent with notice of a change in Student's IEP, and materially changed the IEP. The issues are general and not specific to Student, as the complaint fails to identify the IEP or services that are in dispute. Student's allegations are overly vague and fail to provide enough information for Tustin to understand the issues forming the basis of the complaint.

The complaint is identical to complaints for other students filed by Attorneys Peter G. Albert and Patrick Donohue, which OAH deemed insufficient. (See *Student v. Poway Unified School District* (August 25, 2020) OAH Case No. 2020080526 [Order Finding Student's Due Process Complaint Insufficient]; *Student v. Saddleback Valley Unified School District* (August 27, 2020) OAH Case No. 2020080561 [Order Finding Student's Due Process Complaint Insufficient]; *Student v. Western Placer Unified School District* (September 2, 2020) OAH Case No. 2020080842 [Order Finding Student's Due Process Complaint Insufficient].) Here, the complaint could be for any child in any

school district, thereby making it impossible for Tustin to prepare for a resolution session or mediation for this matter. For these reasons, Student's complaint is insufficient.

Attorneys Peter G. Albert and Patrick Donohue filed the complaint on behalf of Student. Neither attorney appears to be authorized to practice law in the State of California, in violation of the above authority. Consequently, Attorneys Albert and Donohue were not authorized to file the complaint on behalf of Student. Accordingly, Student shall file the amended complaint through an attorney licensed to practice law in California or through Parent as a self-represented litigant.

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).
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 by an attorney licensed to practice law in California or by Parent as a self-represented litigant, the complaint will be dismissed.
5. All dates previously set in this matter, with the exception of the Order to Show Cause Hearing, are vacated.

6. The order to show cause hearing is rescheduled to 9:00 AM on October 16, 2020. Student must file a response no later than 5:00 PM, September 29, 2020. Any response by Tustin shall be filed by 5:00 PM on October 12, 2020.

IT IS SO ORDERED.

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Cararea Lucier
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Cararea Lucier

Administrative Law Judge

Office of Administrative Hearings