BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. FALLBROOK UNION ELEMENTARY SCHOOL DISTRICT.	OAH Case No. 2018100731 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On October 9, 2018, Parent on behalf of Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming Fallbrook Union Elementary School District. Fallbrook Union did not receive a copy of the complaint until October 25, 2018. On October 31, 2018, Fallbrook Union timely 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.)

[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).

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.)

DISCUSSION

Student's complaint alleges six claims, which are all insufficiently pled as discussed below.[2]

Issue one of the complaint is insufficiently pled as it fails to provide a sufficient description of the alleged failures on the part of Fallbrook Union to implement Student's health plan. The complaint fails to identify the aspects of the health plan that Fallbrook Union allegedly failed to fully implement and how any failures deprived Student from accessing or benefiting from his education, such as lost opportunities in instruction and services.

Issue two of the complaint is insufficiently pled as it is confusing as to what failure on the part of Fallbrook Union is being alleged with respect to assessments in the areas of function behavior and one-to-one aide support. The complaint is unclear as to whether Fallbrook Union was required to assess Student in the areas of functional behavior and one-to-one aide support or whether Fallbrook Union failed to provide Student with independent educational evaluations in those areas.

Issue three of the complaint is insufficiently pled as it fails to allege sufficient facts describing the alleged "poor level of adult functioning and supportive stance" on the part of Fallbrook Union. The complaint does not provide an adequate description of the conduct by

[2] Student also attached to his complaint a copy of his individualized education program, correspondence between Parent and Fallbrook Union, a copy of previous due process hearing request and correspondence from the California Department of Education, amongst others. None of these documents shall be considered as part of Student's complaint as these documents constitute evidence, not allegations of Fallbrook Union's purported denial of a free appropriate public education.

Fallbrook Union staff regarding alleged bullying and intimidation of Parent and how the alleged conduct impeded Student's ability to access and benefit from his education or deprive Parent of a meaningful opportunity to participate in the development of Student's educational program.

Issue four of the complaint is insufficiently pled as it fails to allege sufficient facts describing the alleged refusal of Student's teacher to consider the findings and recommendations of other professionals. The complaint does not provide an adequate description of when and how Student's teacher allegedly disregarded the recommendations of other professional and how the teacher's actions impeded Student from benefiting from his educational program.

Issues five and six of the complaint are insufficiently pled as they fail to provide an adequate description on how and when Fallbrook Union's alleged failures to monitor Student's bathroom breaks and assess Student throughout the day impeded Student's ability to benefit or access his educational program or denied Parent from meaningfully participating in the development of Student's educational program.

Student's complaint is insufficiently pled in that it fails to provide Fallbrook Union with the required notice of a description of the problems and the facts relating to the problems. The complaint falls short of providing Fallbrook Union with an awareness and understanding of the issues forming the basis of the complaint to allow Fallbrook Union to appropriately respond to the complaint and prepare for a resolution session and hearing.

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 not well-defined. The requests for Fallbrook Union to listen to professionals without bias, the manner in which the functional behavior and one-to-one aide assessments are to be conducted, the role of an advocate lawyer in addressing alleged bullying, as well as the resolutions related to Fallbrook Union's teacher and staff to listen to other professionals and to monitor Student are confusing and unclear.

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).[3]

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: November 2, 2018

DocuSigned by:
Rommel P. Cruz
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ROMMEL P. CRUZ
Administrative Law Judge
Office of Administrative Hearings

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