BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. GARDEN GROVE UNIFIED SCHOOL DISTRICT.	OAH Case No. 2016120842 ORDER OF DETERMINATION OF INSUFFICIENCY OF DUE PROCESS COMPLAINT

On January 10, 2017, Student filed an Amended Request for Due Process Hearing [1] (amended complaint) with the Office of Administrative Hearings naming Garden Grove Unified School District as respondent. On January 20, 2017, Garden Grove filed a Notice of Insufficiency as to Student's amended 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.)

DISCUSSION

On January 4, 2017, OAH issued an order determining Student's original complaint in this matter was insufficient. In that order, Student was directed to provide more specificity as to which of Student's unique needs District's educational program failed to address. Student's amended complaint fails to provide that specificity.

Although the wording of the single claim pled has been slightly changed, the allegation fails to identify which Individual Educational Plans are being challenged and what aspects of the programs fail to offer Student a free, appropriate public education. The single allegation that "District denied Student a FAPE by failing to provide an appropriate educational program where Student could make meaningful educational progress" leaves Garden Grove to guess during what time period it is alleged Student was denied FAPE and what features of the program are alleged to be insufficient. Garden Grove should neither have to guess what Student is alleging nor mine the complaint for any possible allegations that might be being made. The issues should be clearly delineated so Garden Grove has the opportunity to meaningfully participate in a resolution session, mediation and/or a Due Process Hearing.

Student's amended complaint is insufficiently pled in that it fails to provide Garden Grove with the required notice of a description of the problem and the facts relating to the problem.

ORDER

1. Student's amended complaint is insufficiently pled under section title 20 United States Code 1415(c)(2)(D).

2. Student shall be permitted to file a second amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).[2]

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

3. The second 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 second amended complaint, the complaint will be dismissed.

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

DATE: January 24, 2017

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