BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SAN DIEGUITO UNION HIGH SCHOOL DISTRICT.	OAH Case No. 2019031116 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On March 27, 2019, Parent on behalf of Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming San Dieguito Union High School District. On May 7, 2019, Student filed a Motion to Amend the Due Process Hearing Request (amended complaint), which OAH granted on May 10, 2019. On May 17, 2019, San Dieguito Union filed a Notice of Insufficiency as to Student's amended complaint.

On May 20, 2019, OAH issued an order determining issues one, three, and five of Student's amended complaint as insufficiently pled under title 20 United States Code section 1415(c)(2)(D). OAH granted Student permission to file a second amended complaint.

On May 23, 2019, Student filed a Motion to Amend the Due Process Hearing Request (second amended complaint). On June 3, 2019, San Dieguito Union filed a timely Notice of Insufficiency as to Student's second 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).

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).)

[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).

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, *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 second amended complaint alleges five claims, four of which are sufficient and one of which is insufficient. The issues are discussed below.

Issues two, three, four, and five are sufficiently pled to put San Dieguito Union on notice as to the basis of Student's claims. Student contends that San Dieguito Union denied her a free appropriate public education during the 2018-2019 school year by failing to implement her individualized education program and failing to offer her a transition plan to San Diego Center for Children despite Student's struggles with transition in the past. As a resolution, Student seeks an order that San Dieguito Union fund her placement at the Winston School, a nonpublic school. The second amended complaint describes sufficient facts to provide San Dieguito with an awareness and understanding as to the issues surrounding the alleged failure to implement Student's IEP during the 2018-2019 school year and the alleged failure to offer her a transition plan. Accordingly, issues two, three, four, and five of the second amended complaint are sufficient.

However, the second amendment complaint failed to cure the insufficiencies of the first amended complaint as to issue one as described in the May 20, 2019 Order of

Determination of Sufficiency of Due Process Complaint. Issue one continues to be insufficiently pled. Issue one fails to sufficiently describe how San Dieguito Union's offer of placement at the San Diego Center for Children denied Student a FAPE. Specifically, the second amended complaint is void of any alleged facts as to why San Diego Center for Children could not serve Student or what aspects of San Diego Center for Children could not meet Student's needs as Student's contention is that Winston School is more appropriate for Student and Parent's preference, not that San Dieguito Union failed to offer a FAPE.

The second amended complaint fails to provide enough information to provide San Dieguito Union with an awareness and understanding of its alleged violation related to its offer of placement at San Diego Center for Children. Accordingly, issue one is insufficient.

ORDER

1. Issues two, three, four, and five, of Student's second amended complaint are sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).

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

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

4. 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.

5. If Student fails to file a timely third amended complaint or if the third amended complaint fails to cure the insufficiencies as described in this order, the hearing shall proceed only on issues two, three, four, and five in Student's second amended complaint.

DATE: June 7, 2019

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

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