BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. YOSEMITE UNIFIED SCHOOL DISTRICT AND MADERA COUNTY OFFICE OF EDUCATION.	OAH Case No. 2017110601 DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On December 11, 2017 Student filed an Amended Due Process Hearing Request with the Office of Administrative Hearings, naming Yosemite Unified School District and Madera County Office of Education. On December 19, 2017, District and County filed a Notice of Insufficiency as to Student's amended complaint.[1]

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] On December 19, 2017, District and County also filed a Motion to Dismiss Student's complaint. That Motion will not be addressed because this Order finds Student's complaint insufficient, as discussed herein.

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 amended complaint identifies two issues. The first issue states: "I am concerned for my daughters safety because of an inappropriate placement of severely autistic violent students in both the Special Education High School class and the Adult Transition class at Yosemite High School." The facts supporting this issue allege two lockdown incidents due to violence of another student. The amended complaint does not allege Student was involved in, or injured by either incident. The second issue states: "I am concerned that [Student] does not have a thriving educational environment. I have witnessed regression in both her academic and social skills. Since she has no safe placement she retreats more and more into herself, refusing to interact with family and friends." The complaint does not include any facts to support this issue.

Student's amended complaint does not sufficiently include a description of problems relating to Student's special education identification, evaluation, educational placement, or the provision of FAPE to Student; or facts relating to those problems. Instead, the amended complaint is vague and does not include sufficient information to put District and County on notice of the issues forming the basis of the complaint, or to allow District and County to prepare for and participate in a resolution session, mediation, and due process hearing. Therefore, Student's amended complaint is insufficient.

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 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]

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 timely file a second amended complaint, the matter will be dismissed.

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

DATE: December 21, 2017

DocuSigned by:
Tara Doss
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TARA DOSS
Administrative Law Judge
Office of Administrative Hearings

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