BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SAN DIEGO UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018100092 AMENDED ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On September 27, 2018, Parent on behalf of Student, filed a Due Process Hearing Request (complaint) with the Office of Administrative Hearings, naming San Diego Unified School District.

On October 11, 2018, San Diego 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). 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 that it has not met the notice requirements. (20 U.S.C. § 1415(c)(2)(c); Ed. Code, § 56502, subd. (d)(1).

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 filed the complaint on September 27, 2018, and San Diego filed a notice of insufficiency on October 11, 2018, 14 days later. Thus, San Diego's notice of insufficiency was timely filed.

Student's three and one-half page complaint consists of 35 unnumbered and untitled paragraphs. The complaint neither delineates facts nor issues and appears to be a factual timeline of incidents at school from August 23, 2018 through September 27, 2018, as well as incidents outside of school. The descriptions are not linked to any issue or allegation against San Diego. No IEP dates or IEP team meetings are included in the complaint, and some issues appear outside of OAH's jurisdiction. Thus, the complaint is insufficient.

The complaint states that Student was denied a FAPE because of failure to provide appropriate services in Spanish, math and athletics but is it unclear what services were not provided, in what classes, and what IEP the services relate too.

Within the factual description includes allegations related to discrimination and harassment in water polo and Spanish class, and retaliation by the school, and it is unclear if these descriptions are within OAH's jurisdiction and relate to special education.

Further, some paragraphs describe issues that appear to be unrelated to special education such as class registration, class schedule changes, retaking a test, and missing school, and there is no information as to how these relate to a particular IEP, Student's disabilities, accommodations, or FAPE violations.

An additional description discusses Student getting kicked off a sports team outside of school for complaining about bullying, but it is unclear how that relates to a FAPE violation.

Parent complains that she requested to receive Student's work and assignments in Spanish class and was ignored but it does not allege that this is a FAPE violation or a failure to implement an IEP.

The complaint discusses requesting alternative dispute resolution but it is not specific as to time.

The complaint also describes the need of speech and occupational therapy but does not explain if this was in a previous IEP, requested by Parent to the school, or if these services were not implemented through an IEP.

Student failed to state any issues including causes of action against San Diego. Additionally, Student did not specify what specific acts or failures are attributable to San Diego and a denial of FAPE. Thus, Student's complaint lacks any decipherable claims or issues.

Because of this, the complaint is insufficiently pled in that Student failed to give information to provide an awareness and understanding of the issues and proposed resolutions such that can be used to prepare for a resolution session, mediation and hearing.

A parent who is not represented by an attorney may request that the Office of Administrative Hearings provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in the complaint. Parent is encouraged to contact OAH for assistance if she intends to amend the due process hearing request on behalf of Student.

ORDER

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

2. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).[1]

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, it will be dismissed.

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

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

DATE: October 16, 2018

DocuSigned by:
Cynthia Fritz
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CYNTHIA FRITZ
Administrative Law Judge
Office of Administrative Hearings