BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SOUTH PASADENA UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018110975 ORDER OF DETERMINATION OF INSUFFICIENCY OF DUE PROCESS COMPLAINT AND GRANTING LEAVE TO AMEND

On November 29, 2018, Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming South Pasadena Unified School District as a party. On December 10, 2018, South Pasadena 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).

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).)

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

[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).

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 complaint alleges three claims which are all insufficiently pled. Student lists each problem without providing any supporting facts. Student's complaint thus fails to provide South Pasadena with the required description of each problem and facts relating to the problems.

With respect to Issue One, Student asserts that South Pasadena committed a procedural violation which denied Parent meaningful participation and deprived Student of educational opportunity when it failed to carry out its child find obligations by failing to assess Student and offer her an individualized education program. Student fails to provide any supporting facts as to why South Pasadena should have suspected that Student may have a qualifying disability and during which time period. Issue One is insufficiently pled.

In Issue Two, Student alleges South Pasadena committed another procedural violation by failing to "timely respond to [P]arent's request for an assessment for an individualized education program by way of an appropriate prior written notice." Student does not provide any supporting facts such as when and how Parent requested an assessment, and from whom. It is additionally unclear if Student is alleging that South Pasadena provided a legally deficient prior written notice or whether it failed to respond at all to Parent's request for assessment. Issue Two is insufficient.

Finally, in Issue Three, Student simply states that South Pasadena denied her a free appropriate public education by failing to make her eligible for special education and to offer her an appropriate IEP. Again, there are no supporting facts such as the nature of Student's

disability or why she requires special education and related services. Student's Issue Three is insufficiently pled.

Student's complaint has not provided sufficient notice to allow South Pasadena to prepare for and participate in a resolution session or due process hearing. Student will be afforded an opportunity to amend her complaint.

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).) Student's proposed resolutions request that South Pasadena fund Student's tuition and costs at a residential treatment center including Parent lodging and transportation; reimbursement for privately funded tuition and costs including medical expenses, psychological costs, drug treatment expenses, travel and lodging; and compensatory educational services. Student's resolutions are not well-defined in that they do not specify why she requires residential treatment; which treatment center she is attending for which she seeks reimbursement; or the nature of the compensatory services she is seeking. Even so, Student has met the statutorily required standard of stating a resolution to the extent known and available to her at the time. However, this does not render the complaint sufficient. Should Student choose to file an amended complaint, the amended complaint must additionally include proposed resolutions.

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).[2]

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.

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

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

DATE: December 11, 2018

DocuSigned by:
Theresa Ravandi
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THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings