BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENTS ON BEHALF OF STUDENT,	OAH Case No. 2018050563
v.	ORDER DETERMINING DUE PROCESS COMPLAINT TO BE PARTIALLY INSUFFICIENT
SAN DIEGUITO UNION HIGH SCHOOL DISTRICT.	

On May 9, 2018, Parents on behalf of Student filed a Due Process Hearing Request[1] with the Office of Administrative Hearings, naming San Dieguito Union High School District. On May 11, 2018, Student filed a request to amend her complaint and amended complaint. On May 24, 2018, OAH granted Student's request to amend the complaint.[2] On June 8, 2018, District 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).

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.)

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[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).

[2] The amended complaint is deemed received and filed, and all applicable timelines for the due process hearing reset, upon OAH's order granting Student's motion to amend. (1415(c)(2)(E)(ii).)

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.)

OAH does not have jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), and state civil rights laws.

DISCUSSION

Student asserts nine claims against District in her complaint. Student's first issue alleges that District denied her a free appropriate public education during the 2015-2016 school year, by failing to provide appropriate assessments the areas of psycho-education and speech; and by inappropriately exiting Student from special education. The issue is sufficiently pled for District to prepare for resolution and due process hearing.

Student's second issue alleges that District denied Student a FAPE during the 2015-2016 school year, by preventing Parents from participating in Student's education and other unspecified procedural violations. The complaint is insufficiently pled as it fails to state how District prevented Parents from participating in Student's education, and fails to state what other procedural violations may have occurred. Consequently, issue two does not contain sufficient facts to permit District to prepare for a resolution session and due process hearing.

Student's issue three alleges that District denied Student a FAPE during the 2016-2017 school year, by failing to comply with child find obligations and by failing to assess Student in the areas of vision therapy and psycho-educational. Issue four alleges that District prevented Parents from participating in Student's education by failing to assess Student in the areas of vision therapy and psycho-educational; and by failing to provide prior written notice of its decision to not assess Student in those areas. The facts contained in Student's complaint are sufficiently pled to permit District to prepare for resolution and due process hearing.

Issues six and seven assert that District denied Student a FAPE during the 2017-2018 school year, by failing to comply with child find obligation; failing to assess Student in vision therapy and psycho-educational; preventing Parents from participating in Student's

education by failing to assess Student in the areas of vision therapy and psycho-educational; and failing to provide prior written notice of its decision to not assess Student in those areas. Student's issues six and seven are sufficiently pled.

Student's issues five, eight, and nine allege that District violated Student's rights under section 504. OAH does not have jurisdiction over section 504 claims. Consequently, Student's complaint is insufficient in regards to those issues.

Therefore, only Student's statement of issues one, three, four, six, and seven state sufficient facts supporting the claims to permit District to prepare for a resolution session and due process hearing under OAH.

Student's proposed resolutions include, amongst other requests, independent educational evaluations and compensatory education. 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).) Here, Student has met the statutorily required standard of stating a resolution to the extent known and available to her at the time she filed her complaint.

ORDER

1. Issues one, three, four, six, and seven of the complaint are sufficiently pled under title 20 United States Code section 1415(b)(7)(A)(ii).

2. Issues two, five, eight, and nine of the complaint are insufficiently pled under section title 20 United States Code 1415(c)(2)(D).

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

4. If Student fails to file a timely amended complaint, the hearing shall proceed only on issues one, three, four, six, and seven in Student's complaint.

DATE: June 13, 2018

DocuSigned by:
Paul Kamoroff
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PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings

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