BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Matter of:<br><br>PARENT ON BEHALF OF STUDENT,<br><br>v.<br><br>SAUGUS UNION SCHOOL DISTRICT AND ACADEMY FOR ADVANCEMENT OF CHILDREN WITH AUTISM. | OAH Case No. 2018010256<br><br>ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT |

On January 3, 2018, Parent on behalf of Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming Saugus Union School District and Academy for Advancement of Children with Autism ("Respondents"). On January 9, 2018, District 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).

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] 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).

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 seven claims, which are all insufficiently pled as discussed below.

Issue 1: The complaint fails to specify the time period as to when Student believes his triennial IEP review was required to be held and a description as to why it had to be held at that time. Furthermore, the complaint is unclear if it is referring to a District school or Academy in asserting that the "school" allegedly failed to hold Student's triennial IEP review.

Issue 2: The complaint fails to specify the date(s) as to when Student alleges a matriculation meeting was held without Parent's knowledge. The complaint also fails to describe how this alleged violation impacted Student's ability access to his educational opportunities and/or impeded Parent's ability to meaningfully participate in Student's IEP process. The complaint also fails to identify which of the Respondents held the alleged meeting.

Issue 3: Similar to Issue 1, the complaint fails to specify the time period as to when Student believes his triennial IEP review was required to be held and a description as to why it had to be held at that time based on Parent's understanding as to when Academy received the completed triennial reports.

Issue 4: The complaint fails to identify which of the Respondents allegedly withheld Student's report card and progress reports on goals from Parent. The complaint also fails to identify the report card requested or the time frame of the progress reports sought. The complaint also fails to provide sufficient facts as to when Parent was entitled to the report card and progress reports and a description of how the Respondent(s) failed to provide the report card and progress reports to Parent in a timely and appropriate fashion.

Issue 5: The complaint fails to provide sufficient facts regarding Student's expectations as to extended school year services at Academy. The complaint does not provide sufficient facts regarding Respondents' alleged failure to provide Parent timely and appropriate notice regarding any alleged denial of extended school year services at Academy. The complaint should describe the extended school year services Student was entitled to, when and why he was entitled to them, and how Respondents failed to offer those services.

Issue 6: The complaint fails to specify what services and for what period of time Academy allegedly failed to provide services pursuant to a settlement agreement. Additionally, the complaint fails to provide sufficient facts regarding Academy's obligations under a settlement agreement.

Issue 7: The complaint fails to specify the time period as to when Academy allegedly failed to provide Student with speech and occupational therapy services pursuant to an IEP. The complaint also does not identify the IEP.

The complaint falls short of providing District with an awareness and understanding of the issues forming the basis of the complaint and as a result, it does not provide District with sufficient information to adequately respond to the complaint and prepare for the hearing. Therefore, Student' complaint is insufficient.

Student's proposed resolutions requests Student be permitted to repeat the Sixth grade and District fund a non-public school placement of Parent's choice. 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).) The proposed resolutions stated in Student's complaint are sufficiently defined and meet the statutorily required standard of stating a resolution to the extent known and available to him at the time.

**MEDIATOR ASSISTANCE FOR NON-REPRESENTED PARENTS: 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 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.

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

DATE: January 10, 2018

DocuSigned by:
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.