BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LEMOORE UNION ELEMENTARY SCHOOL DISTRICT AND HANFORD ELEMENTARY SCHOOL DISTRICT.	OAH Case No. 2018041088 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT FOR LEMOORE UNION ELEMENTARY SCHOOL DISTRICT

On April 10, 2018, Student served Lemoore Union Elementary School District with a due process hearing request (complaint). [1] On April 17, 2018, Lemoore's counsel attempted to file a notice of insufficiency with the Office of Administrative Hearings but was told that a complaint had not been filed with OAH. On April 20, 2018, Student filed the complaint with OAH naming Lemoore Union Elementary School District and Hanford Elementary School District. On May 2, 2018, Lemoore resubmitted and filed a notice of insufficiency in this case. Because this was just 12 days after the case was filed with OAH, the notice of insufficiency is found to be timely filed.

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,

[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).

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's Claims

Student's complaint alleges six claims, which are all insufficiently pled as discussed below.

Issue Number One: Parent states "[Student] cannot read or write. After low test scores school refused special education"

Issue Number Two: Parent alleges that Student was segregated from normal peers and isolated.

Issue Number Three: Parent questions "why [Student] was passed on to 3 grade knowing he has a [sic] academic problem"

Issue Number Four: Parent questions " why does the school focus on his behavioral [sic] and make him out to be a juvenile delinquent"

Issue Number Five: Parent questions "why was [Student] helded [sic] back in the 3rd grade without parents knowing"

Issue Number Six: Parent questions "why was my son dealt with preduijice, [sic] why was he isolated, why did teachers lie"

Student fails to provide Lemoore with the required notice of a description of the problem and the facts relating to the problem. Here, Student's complaint names Lemoore as a party but no causes of action or factual allegations mention or discuss Lemoore. Student does not specify any allegations of fact as to what specific acts or failures to act are attributable to Lemoore as opposed to Hanford Unified School District. There are no school years or dates that would otherwise notify Lemoore of such.

Further, the claims are general and fail to assert actionable claims under the IDEA or state law. There are no contentions that Lemoore violated any special education laws, or that it denied student a free and appropriate public education. Student's claims fail to provide any specificity regarding any act or omission by Lemoore related to "proposed initiation or change concerning identification, evaluation, or educational placement, or the provision of a FAPE." Thus, the Student's complaint is insufficiently pled.

Student's Resolutions

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 are as follows:

1. "Examine [Student] test scores as a whole."

2. "Question and examine why that after school setting and why he wasn't being given a free education to take care of the issue."

3. None

4. "Why does the teacher and staff openly embarrass [Student]"

5. None

6. "They be held accountable, money settlement from school district that wrongfully deprived my son of a free education"

The proposed resolutions stated in Student's complaint are not well-defined and fail to request specific relief from Lemoore.

Because of this, the complaint fails to state sufficient facts that give Lemoore an awareness and understanding of the issues and proposed resolutions as they pertain to it such that can be used to prepare for a resolution session, mediation and hearing. Thus, the complaint is insufficiently pled as to Lemoore.

A parent who is not represented by an attorney may ask 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 as to Lemoore.

5. All dates previously set in this matter are vacated as to Lemoore.

DATE: May 7, 2018

DocuSigned by:
Cynthia Fritz
3054C9C1F7E040A...

CYNTHIA FRITZ
Administrative Law Judge
Office of Administrative Hearings

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