BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SOLANO COUNTY OFFICE OF EDUCATION.	OAH Case No. 2018031005 ORDER FINDING COMPLAINT ISSUES 1, 2 AND 3 SUFFICIENT AND ISSUE 4 INSUFFICIENT

On March 23, 2018 Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming Solano County Office of Education (County Office of Education). On April 6, 2018, County Office of Education 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.)

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,

[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).

supra, at p. 34.) The pleading requirements should be liberally construed in light of the broad remedial purposes of the Individuals with Disabilities Education Act 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 alleges the following facts in his complaint in support of four issues. He is fourteen years old, and qualifies for special education based on his diagnoses of Down Syndrome and Deaf and Hard of Hearing.

Issues 1, 2 and 3 in the complaint are sufficiently pled. Student alleges County Office of Education violated the IDEA during the 2015-2016, 2016-2017, and 2017 through November 16, 2017 school years by : (1) failing to implement the related services in Student's individualized education program by not allowing Student to participate fully in fieldtrips with his peers due to Student's alleged behavior; (2) depriving Parents of the opportunity to participate in a meaningful way in his educational program, and impeding Student's specialized education by failing to appropriately communicate with Parents regarding Student's related services; and (3) impeding Student's education by not providing appropriate accommodations and services including specialized interpreters, closed-captioning and meaningful support to assist him during the school day.

Student's proposed resolutions include: (1) compensatory education reimbursement for two years in a community-based deaf and hard of hearing tutoring class of his choice for one to two classes weekly for up to three hours in a week; and (2) travel reimbursement to and from his home to his community based deaf and hard of hearing tutoring class. The proposed resolutions are sufficient.

The facts alleged in Issues 1, 2 and 3 are sufficient to put County Office of Education on notice of the issues forming the basis of the complaint. Student's complaint identifies the issues and adequate related facts about the problem to permit County Office of Education to respond to the complaint and participate in a resolution session and mediation. District's assertions that Student's claims fall outside of OAH jurisdiction are not appropriately addressed in a notice of insufficiency.

However, Issue 4 is insufficiently pled. Student alludes to "inappropriate delivery" but does not state what specific service, support or educational program was inappropriately delivered. Student also alludes to data that suggests he is intellectually disabled, but he does not assert whether County Office of Education failed to appropriately identify his areas of disability or failed to appropriately classify his eligibility. Student also asserts that County Office of Education allegedly changed his IEP, but he does not identify which IEP it changed, when or how it was changed, or what impact the alleged change had on Student. Therefore, Student has failed to state sufficient facts supporting this claim, and the claim is insufficient. The claim is not sufficiently pled to put County Office of Education on notice of the claim so that it can respond to the complaint as to Issue 4.

Student shall have the right to file an amended complaint, which, if filed, shall include a restatement of Issues 1 through 3, as defined above.

A parent who is not represented by an attorney may request that the Office of Administrative Hearings (OAH) provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

ORDER

1. Issues 1, 2, and 3 of Student's complaint are sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).

2. Issue 4 of Student's complaint is insufficient under title 20 United States Code section 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).[2]

4. The amended complaint shall comply with the requirements of Title 20 United States Code section 1415 (b)(7)(A)(ii), and shall be filed not later than 7 days from the date of this order.

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues 1, 2 and 3 of Student's complaint.

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

6. All prehearing conference and hearing dates in this matter are confirmed.

DATE: April 9, 2018

DocuSigned by:
Jackie C. Dai
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JACKIE C. DAI
Administrative Law Judge
Office of Administrative Hearings