BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. IMPERIAL UNIFIED SCHOOL DISTRICT AND IMPERIAL COUNTY OFFICE OF EDUCATION.	OAH Case No. 2015110729 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On November 6, 2015, Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming Imperial Unified School District and Imperial County Office of Education. On November 20, 2015, Imperial County filed a Notice of Insufficiency as to Student's complaint. Imperial Unified did not file a Notice of Insufficiency.

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.

[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).

§ 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 complaint contains three issues for hearing, which involve the purported failure to implement a settlement agreement between the parties, and failure to consider the provision of auditory verbal therapy and Student's special communication needs at the August 19, 2015 individualized educational program team meeting. Student alleges sufficient facts in Issue 1 regarding Imperial County's purported failure to implement provisions of the parties' settlement agreement, which denied Student a FAPE. The factual and legal question as to whether Imperial County is a responsible public agency is outside the scope of a notice of insufficiency, and needs to be raised in a motion to dismiss. Therefore, Student alleged sufficient facts to put Imperial County on notice as to Issue 1 for hearing.

Regarding Issues 2 and 3, Student makes no allegations against Imperial County and the factual discussion concerns only the conduct of Imperial Unified at the August 19, 2015 IEP team meeting. If Student wishes to proceed against Imperial County in Issues 2 and 3, Student will need to file motion to amend the complaint.[2]

Student's proposed resolution is that Imperial County and Imperial Unified make Student whole for the alleged violations, provide appropriate services and to convene an IEP

[2] The filing of an amended complaint will restart the applicable timelines for a due process hearing under title 20 United States Code section 1415(c)(2)(E)(ii).

team meeting. 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 well-defined requests that meet the statutorily required standard of stating a resolution to the extent known and available to Student at the time.

ORDER

1. The complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii) as to Issue 1 against Imperial County.

2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

DATE: December 2, 2015

/s/

PETER PAUL CASTILLO
Presiding Administrative Law Judge
Office of Administrative Hearings