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>EDNOVATE U.S.C. HYBRID HIGH SCHOOL AND LOS ANGELES UNIFIED SCHOOL DISTRICT. | OAH Case No. 2017020034<br><br>ORDER OF DETERMINATION OF SUFFICIENCY OF STUDENT'S SECOND AMENDED DUE PROCESS COMPLAINT |

On June 5, 2017, OAH granted Student leave to file a second amended Due Process Hearing Request (second amended complaint) Ednovate U.S.C. Hybrid High School and Los Angeles Unified School District. On June 20, 2017, Enovate filed a Notice of Insufficiency as to Issue Nine of Student's second amended complaint. Student filed an opposition on June 21, 2017. OAH has not received a response from LAUSD.

## 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, *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 contends the second amended complaint was filed on June 2, 2017, and Enovate's NOI was filed on June 20, 2017, over 15 day after it received Student's second amended complaint. While this chronology is correct, Student's request to file the second amended complaint was not granted until June 5, 2017. Therefore, Enovate's NOI was timely filed within 15 days of Student's leave to amend.

Enovate raised the issue of insufficiency only as to Student's Issue Nine. Therefore, all other issues raised in Student's second amended complaint are deemed sufficient.

With regard to Issue Nine, Student alleges " [Respondents] have pervasively infringed on parent participation by stonewalling numerous requests for needed information or other cooperation, thus creating a hostile environment and thereby denying FAPE" Student then cites four incidents allege "kerfuffles"[1] between Parents and District, which establish no relationship to any initiation or change concerning the identification, evaluation or educational placement of the child, or the provision of a FAPE to the child. While Student argues that subjecting a student to a hostile environment may deny FAPE, in this matter Student has drawn conclusions of denial of FAPE, but has not cited specific facts describing, as he puts it, IEP formulation, the enforcement process or of any loss of educational opportunity. As example, Student contends the oppositional conduct of Enovate's staff towards Parents reasonably inferred hostility to Student; but he does not specifically explain, who, when, where, or how this denied Student a FAPE. Therefore, as currently pled, Student has failed to state sufficient facts supporting this claim, and the claim is insufficient.

[1] Kerfuffle is the term used by Student in defining the disagreements between Parents and District staff.

ORDER

1. Student's Issues One through Eight of his second amended complaint were not subject to this Notice of Insufficiency and are therefore sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).

2. Issue Nine of Student's second amended complaint is insufficiently pled 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), subject to the terms contained in the Order Following Prehearing Conference, dated June 5, 2017.

4. 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.

5. If Student fails to file a timely amended complaint, to which OAH grants leave to file pursuant to prior orders, the hearing shall proceed only on Issues One through Eight, in Student's second amended complaint.

DATE: June 23, 2017

DocuSigned by:
Judith Pasewark
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JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings