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. 2017060276 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On June 5, 2017, Parent filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming Solano County Office of Education. On June 19, 2017, District filed a Notice of Insufficiency as to Parent'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).

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. § 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

[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).

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 alleges five claims in the complaint, which are insufficiently pled in that they fail to provide District with the required notice of a description of the problem and the facts relating to the problem.

With respect to Issue One, Student alleges that he has not been receiving instruction from his classroom teacher, and that he has to rely upon his aide for instruction. Student appears to assert that this has been the case since he settled an OAH matter on April 15, 2015, although the time frame is not clear. As a remedy, Student seeks that he be continued in his placement in a deaf and hard of hearing with appropriate services. District contends that the allegation is unclear and that the time frame of the issue is not specific.

Issue One is not properly pled. Although it can be interpreted to allege that Student was denied a free and appropriate public education because of neglect by his classroom teacher, it is not clear if that is in fact what Student wishes to raise. From the statement of requested remedy, it is possible that Student has been removed from his placement. As the time period from April 15, 2015, includes the 2014-2015, 2015-2016, and 2016-2017 school years, it cannot be determined from the complaint whether Student believes he was denied his education in one or several school years.

Issue Two asserts that District recorded false data on one or more of Student's IEPs in retaliation for his settlement in April 2015 and because of that data he may have had his placement changed. As remedy, Student asks that he be retained in his deaf and hard of hearing placement and that he receive an appropriate education. District objects that this issue is too vague for it to be able to prepare a defense.

This issue is also inadequately pled. Parent's description of the facts does not state what IEP or IEPs contained false data, when the false material was created and what the false material was, and what happened as a result. Again, it is unclear whether or not Student was removed from his preferred placement. This issue must be restated with more detail.

In Issue Three, Student alleges that District retaliated against Parent for the OAH matter by twice "contacting" Child Welfare Services, causing Parent to suffer a stroke. Parent asks as relief that Student be retained in his deaf and hard of hearing placement, that he receive an appropriate education, and that he be given compensatory academic instruction. District asserts that this claim does not state a cause of action under the IDEA, which is a matter better raised in a motion to dismiss than by a notice of insufficiency. Nevertheless, Issue Three is inadequately pled, as it does not contain sufficient information about when District acted, what it did, and how the provision of Student's education was affected.

The Fourth Issue of the complaint states that Student was struck several times and, as a result, became "scared to attend his placement March through the present date." Student asserts that District staff were "notified" but nothing was done. As relief, Student requests an "open observation agreement." District challenges this claim on the grounds that it does not set out when, where, and by whom Student was struck, and that it does not set out how Student's education was affected. Student has alleged that he became frightened of attending school, but has not specified whether he did or did not miss school as a result of being struck. District is correct that the statement of this issue is missing necessary detail, including the year during which Student's fear arose, and the allegation regarding the notice given to District by parent also lacks the dates and the substance of that notice. Although not raised by District, the relief requested is also potentially unclear. Issue Four must be repled.

The final issue of the complaint asserts that District breached and did not implement a settlement agreement. As relief, Student requests an appropriate overseer of a future settlement by a mutually agreeable party. District again asserts that OAH lacks jurisdiction over the claim and that the claim fails to assert that Student was denied FAPE. Although OAH does not administer settlement agreements, a claim that the failure to implement a settlement agreement resulted in the denial of the provision of a FAPE would present a proper statement of claim. However, Parent has not done this here. Further, the claim lacks sufficient facts, such as the date of the agreement, the requirements of the agreement, when the breach occurred, the nature of the breach, and how the breach affected Student's right to a FAPE. Accordingly, the statement of Issue Five is not sufficient.

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.) Parent is encouraged to contact OAH for assistance if they intend to amend their due process hearing request. If Parent chooses to amend her due process request, she should specify the alleged acts which violate the IDEA, the time period in which the acts took place, and the relief she is seeking for those specific violations.

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] Student 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. Parent should contact OAH for assistance if she intends to amend the due process hearing request

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 Parent fails to file a timely amended complaint, the complaint will be dismissed.

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

DATE: June 23, 2017

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Chris Butchko
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CHRIS BUTCHKO
Administrative Law Judge
Office of Administrative Hearings

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