BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. PLACENTIA-YORBA LINDA UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017120954 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On December 26, 2017, Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming two individuals who work for Placentia-Yorba Linda Unified School District. On January 2, 2018, District filed a Notice of Insufficiency as to Student's complaint.[2]

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

[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).

[2] District labeled its motion a Notice of Insufficiency and Motion to Dismiss. If District wishes that OAH consider whether OAH has jurisdiction over Student's claims, District needs to file a separate Motion to Dismiss. OAH will not consider District's Motion to Dismiss until District files a separate noticed motion.

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

District challenges the sufficiency of Student's complaint for several reasons. District first challenges the sufficiency of the entire complaint because Student fails to specifically name District and instead names two individuals who work for District. District next argues Student's claims lack factual support. Student alleges five claims in her complaint, some of which are sufficient and some which are insufficient. The issues are discussed below.[3]

In the Student information section of the complaint Student lists her school of attendance as an elementary school listed on District's website and lists her district of residence as District. In the parties section of the complaint Student lists two district employees who District identified as the superintendent and the director of special education. Student also lists the business address for District. Finally, in the proof of service Student identifies she personally delivered the complaint to District's superintendent. Although Student does not list District by name in the parties section of the complaint, it is clear from the information provided she named District as a party.

Student's Issue One alleges District denied Student a FAPE by not providing an appropriate program. Student lists facts to support this such as inaccurate present levels of performance listed in Student's individualized education program and lack of progress for the last five years.

[3] The issues have been reframed for clarity, and to align the issues statements with statutory language. If Parent, on behalf of Student, wishes to clarify the issues that OAH has identified, Student will need to file an amended complaint with the clarifying information.

Issue Two alleges Parent, on behalf of Student, has requested placement twice and District has denied the requests. Issue Two does not allege a separate violation rather it is an additional fact to support Issue One.

Issue Three alleges there have been three compliance complaints filed against District since September. However, Student does not allege if she filed the compliance complaints or how the compliance complaints are a problem related to a proposed initiation or change concerning the identification, evaluation, or educational placement for Student or a denial of FAPE. Therefore, Student has failed to state sufficient facts supporting this claim, and the claim is insufficient.

Issue Four alleges a problem concerning Student's educational placement, specifically she is pulled out of her core classes too much. Student lists facts relating to this problem regarding the amount of time she misses in each class that constitutes a denial of FAPE.

Issue Five alleges District employees made fun of Student during an IEP team meeting. Student does not list any facts regarding the incident, nor does Student allege the incident is related to a proposed initiation or change concerning the identification, evaluation, or educational placement for Student or a denial of FAPE. Therefore, Student has failed to state sufficient facts supporting this claim, and the claim is insufficient.

Student's proposed resolutions requests placement at a nonpublic school, training for District employees, and a formal apology. 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 not well-defined. However, Student has met the statutorily required standard of stating a resolution to the extent known and available to her at the time.

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.) Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

ORDER

1. Issue One, whether District denied Student a FAPE by not providing an appropriate program, is sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).

2. Issue Four, whether Student's educational placement is appropriate, is sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).

3. Issues Two, Three, and Five of Student's complaint are insufficiently pled under title 20 United States Code section 1415(c)(2)(D).

4. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).[4]

5. The amended complaint shall comply with the requirements of title 20 U.S.C. section 1415(b)(7)(A)(ii), include Placentia-Yorba Linda Unified School District as a named party, and shall be filed not later than 14 days from the date of this order.

6. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues One and Four listed above.

DATE: January 4, 2018

DocuSigned by:
Linda Johnson
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LINDA JOHNSON
Administrative Law Judge
Office of Administrative Hearings

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