BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ESCONDIDO UNION SCHOOL DISTRICT.	OAH Case No. 2019020620 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On February 15, 2019, Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming Escondido Union School District. On March 1, 2019, Escondido filed a Notice of Insufficiency to Student's complaint. On March 4, 2019, Student filed a response to the 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).

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 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 alleges in the complaint that Escondido denied Student a FAPE during the 2016-2017 and 2017-2018 school years, by failing to do a combination of the following: (1) timely and appropriately assess in all areas of disability; (2) convene an individualized education program team meeting when Student did not show behavioral progress; (3) offer or provide measurable goals in all areas of need; (4) provide accurate and updated present levels of performance direct instruction; (5) offer appropriate services, supports and/or accommodations; (6) offer an appropriate high school transition plan; and (7) properly document Student's behavioral incidents/negative peer interactions.

As remedies, Student requests: (1) independent educational assessments; (2) compensatory educational services; and (3) staff training on fulfilling Escondido's FAPE obligations.

Escondido's notice of insufficiency contends that Student failed to: (1) specify why each of the assessments were inappropriate beyond "failure to assess all Student's areas of need"; (2) specify which one of Escondido's assessments were inappropriate; (3) specify the reasons why the services Escondido offered were FAPE denials; and (4) articulate a nexus between the alleged FAPE denials and the remedies sought. Escondido also disputes the merit of Student's allegations and contends that Student must address in detail the disputes raised by Escondido for the complaint to be deemed sufficient. With the exception of Student's failure to specify which one of Escondido's assessments he deemed inappropriate and sought independent assessments as a remedy, the specific explanations enumerated by Escondido are beyond that which is required for a complaint to be deemed sufficient. Further, the merits of the allegations are to be addressed at hearing, not by a notice of insufficiency.

The facts as set forth in issue one were insufficiently pled to put Escondido on notice as to which areas of suspected disability Student alleged Escondido failed to appropriately assess. Further, Student sought independent assessments as a remedy, but did not specify which independent assessment he sought from Escondido. The facts in the rest of the

complaint were sufficient to put Escondido on notice of the issues forming the basis of Student's issues two through five of the complaint. Accordingly, Escondido's notice of insufficiency is granted in part, and denied in part.

ORDER

1. Issue one of Student's complaint is insufficiently pled under Title 20 United States Code section 1415(c)(2)(D).

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

3. 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 14 days from the date of this order.

4. If Student fails to file a timely amended complaint, Issue one of the complaint will be dismissed.

5. Issues two through five of Student's complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A) and Education Code section 56502, subdivision (d)(1).

6. All mediation, prehearing conference, and hearing dates in this matter are confirmed as to Issues two through five.[3]

DATE: March 7, 2019

DocuSigned by:
Sabrina Kong
6150FBB6742E44F...

SABRINA KONG
Administrative Law Judge
Office of Administrative Hearings

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

[3] If Student files an amended complaint as to Issue one, all the issues in the complaint will be heard together based on the dates set after the filing of the amended complaint.