BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. CORONA-NORCO UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018070033 ORDER DETERMINING COMPLAINT PARTIALLY SUFFICIENT

On June 26, 2018, Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming Corona-Norco Unified School District, which Corona-Norco asserts it did not receive until July 11, 2018. On July 12, 2018, Corona-Norco filed a Notice of Insufficiency as to Student'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 was filed with OAH on June 26, 2018. Student included a statement of service dated June 1, 2018, declaring the complaint was served using a messenger service. Student did not include a proof of service from the messenger service. Corona-Norco indicates in its NOI that it received Student's complaint on July 11, 2018. Corona-Norco included a declaration from its attorney that Corona-Norco did not receive the complaint from Student and only received a copy after requesting one from OAH. Corona-Norco's NOI was dated, filed with OAH, and served on July 12, 2018, which is more than 15 days after the complaint was filed with OAH, but not more than 15 days after Corona-Norco received Student's complaint. Therefore, Corona-Norco's NOI is timely.

Student's complaint is a page and a half of information alleging various violations regarding extended school year services. Student also refers to attachments with more information. Corona-Norco argues Student's complaint is insufficient because he does not allege a specific time period or specify the specific individualized education programs at issue. Student does not identify with specificity in the first seven paragraphs what time period is at issue; however, in paragraph eight, Student articulates a new issue and specifically states he is alleging a denial of FAPE for extended school year during summer 2018. Taking the complaint as a whole, the first seven paragraphs relate to extended school year during summer 2017.

Although the complaint does not specifically enumerate the issues, Student articulates the below issues within the complaint which are sufficiently pled.[2]

1) Did Corona-Norco deny Student a FAPE by not providing an extended school year program designed to meet his unique needs during summer 2017?

2) Did Corona-Norco deny Student a FAPE by not providing an extended school year program designed to meet his unique needs during summer 2018?

Student's proposed resolution requests an appropriate placement. 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 resolution stated in Student's complaint is not well-defined. However, Student has met the statutorily required standard of stating a resolution to the extent known and available to him 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. Issues one and two listed above are sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).

2. All other facts and issues alleged in Student's complaint are 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).[3]

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.

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[2] 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.

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

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues one and two in Student's complaint as identified in this Order.

DATE: July 19, 2018

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