BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. NEWPORT-MESA UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017060557 ORDER DETERMINING COMPLAINT INSUFFICIENT IN ITS ENTIRETY

On June 9, 2017, Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming the Newport-Mesa Unified School District. On June 23, 2017, District timely 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).

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

[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).

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 contains five issues, none of which are sufficient pled as presently stated.

In issue one Student contends that staff at a District elementary school has shared confidential information about Student with other staff members, and that the information has permeated Student's social environment and neighborhood. Student fails to state when the alleged actions occurred, what confidential information was shared, and in what manner the information was shared. Most importantly, Student fails to state how District's actions relate to his identification, evaluation, or educational placement as a child with a disability, or how District's alleged actions have denied him a free appropriate public education. For these reasons, Student's issue one is insufficient as pled.

In issue two, Student contends that District staff has engaged in harassing behavior, violated Parent's custody and legal rights, and violated a restraining order. Student alleges that these actions have put Student's safety at issue. Student fails to state when these actions allegedly occurred, and what District has specifically done to harass Student and/or his family. Again, and most significantly, Student fails to state how any of these actions have impeded his right to a FAPE. For these reasons, issue two is insufficient as pled.

In issues three and four, Student states that he identified Dr. Kate Mack and Natalie Neal as independent assessors, but that District is refusing to contract with these two professionals. Student's complaint fails to identify the context for any District obligation to contract with these individuals. District's notice of insufficiency states that Student is attempting, by way of the instant case, to enforce a prior OAH decision in case number 2016090104. In the instant case, Student's complaint fails to state how OAH has jurisdiction in the present case over District's alleged failure to comply with the order in the prior case. Student's allegation also fails to state how District's actions have denied him a FAPE. For these reasons, Student's issues three and four are insufficient as pled.

Student's issue five contains vague and somewhat rambling allegations of District failing to document Student's behaviors of motor tics returning and Student picking at his

skin. Student fails to state when the behaviors occurred, who failed to document the behaviors, and why the failure to document them denied Student a FAPE. Student also contends that District has done something to put Mother in an unfavorable position, and has favored Father, colluding with him against Mother and Student. Student alleges other events, without providing the dates the evens occurred, who the actors were, and, most importantly, how the events listed in issue five resulted in District depriving him of a FAPE.

In its entirety, Student's complaint fails to provide sufficient facts relating to the problem alleged. The complaint does not identify the period of time as to when District allegedly failed to provide Student a FAPE nor does it identify how the actions alleged denied him a FAPE. The complaint should describe in detail how each action or lack of action attributed to District impacted Student's ability to access his educational opportunities and make academic, social or behavioral progress.

The complaint falls short of providing District with an awareness and understanding of the issues forming the basis of the complaint and as a result, it does not provide District with sufficient information to adequately prepare for the hearing and how to participate in resolution sessions and mediation. Therefore, Student' complaint is insufficient in its entirely as pled.

As District points out, the majority of Student's complaint and Student's proposed resolutions are outside of OAH's jurisdiction. 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.) Mother is encouraged to contact OAH for assistance if she intends to amend Student's due process hearing request.

ORDER[2]

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).[3]

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.

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[2] Since Student's complaint is found insufficient in its entirety, District's motion to dismiss, filed on June 19, 2017, is denied as moot.

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

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

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

DATE: June 26, 2017

DocuSigned by:
Darrell Lepkowsky
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DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings