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. 2018120429 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On December 12, 2018, Student filed a due process hearing request[1] (complaint) with the Office of Administrative Hearings naming Solano County Office of Education. On December 20, 2018, Solano County Office of Education 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 due process hearing request 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 filed the complaint on December 12, 2018. Solano County Office of Education filed a notice of insufficiency on December 20, 2018. Thus, Solano County Office of Education's notice of insufficiency was timely filed.

Solano County Office of Education's notice of insufficiency claimed that Student's complaint failed to include a clear statement of facts related to the identification, evaluation, placement, or provision of FAPE to the Student. Because of this, Solano County Office of Education alleged that the complaint was insufficient.

Student's complaint alleges one claim, but appears to discuss a number of separate issues, all of which are insufficiently pled as discussed below.

First, Student fails to allege how the Solano County Office of Education is responsible for providing a free, appropriate public education to Student. A review of Student's complaint reveals that no facts are pled alleging the responsibility of the County Office of Education to provide student with a FAPE.

Further, Student states that his progress report showed "diminished progress." While Student attached a recent individualized education plan to his complaint, the facts provided by the attached IEP do not explain how Student's diminished progress relates to any failure of the Solano County Office of Education to provide appropriate placement and services.

Additionally, Student contends that his teacher is mistreating him. The allegation provides neither a description of the mistreatment, nor includes any facts relating to the alleged mistreatment and how it relates to a denial of a free and appropriate public education.

It is also unclear if this allegation is within OAH's jurisdiction without further description. Thus, the contention is insufficiently pled.

Finally, Student alleges discrimination because the IEP team is comprised mostly of Caucasian blue-eyed individuals, and Student is of different descent. Student, however, fails to give any facts in support of this contention. Without facts, it is unclear that any conduct on the part of employees for whom the Solano County Office of Education is responsible relates to a denial of a free and appropriate public education. The allegation, therefore, is insufficiently pled and, in its present form, fails to state a claim over which OAH has jurisdiction.

Parents are not presently represented by counsel. OAH has a handbook for the public that provides guidance for special education due process hearings which can be found at https://www.documents.dgs.ca.gov/oah/SE/Handbook.4.5.18.pdf. Parents are encouraged to consult this document.

A parent who is not represented by an attorney may request that the Office of Administrative Hearings provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in the complaint. Parent is encouraged to contact OAH for assistance if he intends to amend the due process hearing request on behalf of Student.

ORDER

1. Student's complaint is insufficiently pled under section title 20 United States Code 1415(c)(2)(D) as to Los Angeles.

2. Student shall be permitted to file an amended complaint 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 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. All dates previously set in this matter are vacated. OAH shall issue a new scheduling order following the filing of an amended complaint.

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[2] 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 case will be dismissed.

DATE: December 26, 2018

DocuSigned by:
Cynthia Fritz
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CYNTHIA FRITZ
Administrative Law Judge
Office of Administrative Hearings