BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Matter of: | |
| PARENT ON BEHALF OF STUDENT, | OAH Case No. 2016110728 |
| v. | ORDER OF DETERMINATION OF INSUFFICIENCY OF SERVICE OF DUE PROCESS COMPLAINT |
| FRESNO UNIFIED SCHOOL DISTRICT. | |

On November 09, 2016 Parent on behalf of Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming Fresno Unified School District as respondent. On November 18, 2016, Fresno 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

The facts alleged in Student's complaint are sufficient to put Fresno on notice of the issues forming the basis of the complaint. Student's complaint identifies the issues and adequate related facts about the problem to permit Fresno to respond to the complaint and participate in a resolution session and mediation. Therefore, Student's statement of the claims is sufficient.

However, Fresno alleges that it did not receive service of all of the pages of the complaint. Specifically, Fresno has stated that it did not receive the first page of the OAH "Request for Mediation and Due Process Hearing" form which provides some of the basic information pertaining to the case including Student representative contact details and current placement identification. This information is required by 20 U.S.C. (b)(7)(A)(ii)(I).

Electronic transmission is not fail-proof. It is notable that the document filed with OAH is complete. However, Student must ensure that a full and complete copy of the complaint is served on Fresno.

## ORDER

1. The content of the complaint as filed with OAH is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii). However, it appears that electronic service of the document was incomplete as it was missing the required Student identifying information which makes the complaint insufficient. Student is hereby ordered to serve a complete copy of the Request for Mediation and Due Process Hearing with all attachments on Fresno no later than December 2, 2016 with proof of service filed with OAH by that same date.

2. If the complaint is re-served by the deadline noted above, all mediation, prehearing conference, and hearing dates in this matter are confirmed, unless otherwise ordered.

3. If the complete copy of the Request for Mediation and Due Process Hearing with all attachments is not served on Fresno by December 2, 2016 and the proof of service filed with OAH by that same date, the matter will be dismissed..

DATE: November 22, 2016

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Penelope S. Pahl
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PENELOPE S. PAHL
Administrative Law Judge
Office of Administrative Hearings