BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ANTIOCH UNIFIED SCHOOL DISTRICT AND CONTRA COSTA COUNTY OFFICE OF EDUCATION.	OAH Case No. 2017040872 ORDER FINDING DUE PROCESS COMPLAINT INSUFFICIENT AS TO CONTRA COSTA COUNTY OFFICE OF EDUCATION

On April 17, 2017, Parent on Behalf of Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming the Antioch Unified School District and the Contra Costa County Office of Education. On April 28, 2017, 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).

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.)

[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).

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 alleges one primary claim in his complaint, which is insufficiently pled as to County Office of Education. Student alleges that "respondents" failed to assess him in all areas of suspected disability. Student contends that he should have been assessed for auditory processing deficits, for anxiety, and for his social-emotional and behavioral needs. Student also alleges that he should have been assessed in the areas of current vision and hearing, speech and language, organizational skills, academics, and mental health.

Student's detailed factual allegations recount his educational history at Antioch Unified since kindergarten, with emphasis on his education since the 2011-2012 school year, when Antioch Unified first assessed Student and found him eligible for special education and related services. The factual portion of Student's complaint describes the individualized educational programs Antioch Unified has provided to Student since that time. Student's complaint also alleges that since September 2015, Student's absenteeism resulted in Antioch Unified's pursuit of a truancy case against him which is still pending. The complaint also states that Antioch Unified referred Student for mental health services and that he has been receiving those services from an agency called Community Health for Asian Americans since December 2015. Student's complaint additionally states that Student has refused to attend school, allegedly based on his school anxiety, since the beginning of the 2015-2016 school year. In response to Student's refusal to attend school, Antioch Unified began providing home hospital instruction to Student. Student's IEP team subsequently met and developed a plan to slowly return Student to school full time. The plan was not successful, and Student did not go to school much, if at all, from the beginning of the 2016-2017 school year, up to the filing of his complaint.

However, nowhere in Student's detailed complaint is there a mention of County Office of Education. There is no link between Student's attendance in Antioch Unified, his eligibility for special education, the IEPs developed for him, his programming and services, and County Office of Education. All factual information provided in Student's complaint

refers to Antioch Unified as do the descriptions of the IEPs developed and the programming and services Student received. Student does not make any reference to County Office of Education except in the caption of his complaint. Although Student inconsistently refers to "respondents" failing to identify all of his unique needs, there is no information in the complaint that an entity other than Antioch Unified was responsible for Student's education.

Furthermore, in his proposed resolutions, Student only asks that "District" be ordered to provide the several remedies that he requests. There is no reference to multiple parties in his requested resolutions.

For these reasons, Student's complaint is insufficiently pled as to County Office of Education.

ORDER

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

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. If Student fails to file a timely amended complaint, the complaint will be dismissed as to County Office of Education and shall proceed solely as against Antioch Unified.

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

5. All dates presently set in this matter shall remain on calendar as to Antioch Unified, unless Student files an amended complaint.

DATE: May 1, 2017

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