BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. MT. DIABLO UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017050968 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On May 19, 2017 Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming Mt. Diablo. On June 5, 2017, District filed a Notice of Insufficiency as to Student's complaint.

APPLICABLE LAW AND DISCUSSION

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.)

With respect to Issue One, Student alleges a denial of a free appropriate public education, however, Student notes in the complaint that he has reached a settlement with District on this issue. Therefore, Issue One is not being treated as a claim, but for informational purposes as to remainder of the issues against District.

With regard to Issue Two, Student alleges a denial of a free appropriate public education when District allegedly failed to implement the terms of his IEP regarding electronic tools and visual aids. While Student did not specify the particular IEP, the language of the complaint is sufficient to identify Student's currently implemented IEP. District is aware of what IEP is Student's current IEP. Therefore, Student's Issue Two is sufficient.

With regard to Issues Three, Four, and Five, Student alleges inappropriate behavior of several District staff members. Each of these issues is insufficient, as each fail to allege a denial of a free appropriate public education or other violation of the IDEA. As such, each of the remaining issues fails to provide sufficient information to support a claim over which OAH has jurisdiction. Thusly, Student's Issues Three, Four and Five are insufficient.

MEDIATOR ASSISTANCE FOR NON-REPRESENTED PARENTS: 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. Issue One of Student's complaint is not an issue for hearing.

2. Issue Two of Student's complaint is sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).

3. Issues Three, Four, and Five of 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).[2]

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.

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issue Two in Student's complaint.

DATE: June 12, 2017

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Judith Pasework
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JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings

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