BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. MORENO VALLEY UNIFIED SCHOOL DISTRICT.	OAH Case No. 2015090340 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On August 31, 2015 Student filed a Due Process Hearing Request naming Moreno Valley Unified School District.

On September 15, 2015, District filed a Notice of Insufficiency as to Student's complaint. No response or opposition has been filed by Student.[1]

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).[2]

[1] Student requested on September 14, 2015, to continue the mediation, prehearing conference and hearing dates. Student's request is moot with the granting of the NOI, which vacates all previously set dates.

[2] Student's complaint was served by mail, and was posted on August 27, 2015. District received a copy of the complaint on August 31, 2015.

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.

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. v. Brookline School Dist*. (D.N.H., Sept. 10, 2009, No. 06-cv-0215-JL) 2009 WL 2957991 at p.3 [nonpub. opn.]; *Escambia County Board 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, No. 8:04CV2657T24EAJ) 2005 WL 2850076 at p. 3[nonpub. opn.]; but cf. *M.S.-G. v. Lenape Regional High School Dist.* (3d Cir. 2009) 306 Fed.Appx. 772, at p. 3 [nonpub. opn.].) Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge. (Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children With Disabilities, 71 Fed.Reg. 46540-46541, 46699 (Aug. 14, 2006).

DISCUSSION

Student's complaint alleges seven claims in the complaint, all of which are insufficiently pled. The complaint alleges Student has been diagnosed with autism, and is a special education student. The complaint does not contain any factual allegations which identify the assessment, individualized education program or educational placement of Student. Further, the complaint fails to allege facts supporting any violation of or provision of a free appropriate public education to Student related to an assessment, individualized education plan, special education placement and related services, goals or accommodations. Therefore, each claim fails to provide District with the required notice of a description of the problem and the facts relating to the problem.

Issue One alleges in October 2013, Student was assaulted and battered by a teacher's aide, resulting in personal injury to Student and emotional distress to his mother. There are no additional facts or discussion of how this incident is related to special education and related services.

Issue Two alleges during the 2013-2014 school year, Student's teacher and teacher's aide forced Student to dress like animals and frogs. Student is afraid of frogs. There are no additional facts or discussion of how this incident is related to special education and related services.

Issue Three alleges that in February 2014, during an assembly with general education students, the older students "assisted" Student instead of the teacher's aides. The general education students are not professionally competent or trained, and kept yanking Student. Student cried during the assembly and had to be taken home by Mother. There are no additional facts or discussion of how this incident is related to special education and related services.

Issue Four alleges in June 2014, Student fell and was crying. This resulted in bruising. Mother requested a report on how Student was injured, and none was provided.

Issue Four also alleges in June 2014, Mother saw Student crying in the classroom, while wearing only a diaper. Student alleges this is cruel and unusual punishment, however there is no additional information connecting these incidents to special education and related services.

Issue Five alleges in August 2014, Mother was informed by the school receptionist that Student would be in the same classroom as the previous year. This was in spite of what "Jeff" told Mother in June. Further, Mother also spoke with the school psychologist who knew nothing of Student's problems. Student has not provided information regarding who Jeff is, what is his authority, what did he say, and how did it relate to special education and related services. Likewise, Student fails to allege what specifically the school psychologist should have known, why, and how it was related to special education and related services.

Issue Five also alleges during the 2014-2015 school year, Mother requested a one-to-one aide for Student. There are no facts alleged to indicate when this request was made, or why Student required a one-to-one aide. Student further alleges that this request for an aide was denied by a school psychologist who never reviewed Student's file. Again, no specific information is alleged to support this claim.

Issue Six alleges Student's teacher lied about Student "having a bad day." There are no additional facts or discussion of how this incident is related to special education and related services.

Issue Seven alleges on February 11, 2015, District failed to supervise Student, resulting in Student picking up a fire extinguisher and spraying himself with foam. There are no additional facts or discussion of how this incident is related to special education and related services.

Issue Eight alleges throughout the 2014-2015 school year Student spent too much time on the computer or watching television. There are no additional facts or discussion of how this incident is related to special education and related services.

Issue Nine alleges as a result of District staff actions related to Student, Mother went to the hospital twice for stress related problems, which continually cause Mother emotional stress. Further, on one hospital visit, Student was crying, and found out that one of the teacher's aides was in the hospital. When Student saw the aide, he emotionally acted out in a breakdown "showing fear of school staff." There are no additional facts or discussion of how this incident is related to special education and related services.

ORDER

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 United States Code 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.

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

DATE: September 17, 2015

/s/
JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings

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