BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. BERKELEY UNIFIED SCHOOL DISTRICT.	OAH Case No. 2015120931 ORDER DETERMINING DUE PROCESS COMPLAINT TO BE PARTIALLY INSUFFICIENT

On December 15, 2015, Student filed a due process hearing request naming Berkeley as respondent. On January 26, 2016, an order was issued permitting Student to file an amended complaint and it was deemed filed that day. Berkeley, having been served the amended complaint prior to it being filed with OAH, filed a Notice of Insufficiency on January 25, 2016, as to the issues raised in the amended complaint.[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).)

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

[1] The January 26, 2015, Order granting Student leave to file an amended complaint stated that a separate order would be issued regarding the NOI. This is that order.

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 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

Berkeley raises three primary contentions regarding the amended complaint's sufficiency. First, Berkeley contends the parties executed a final settlement agreement on September 15, 2015, that bars all claims up to that date and that many of Student's issues arise prior to that date. Whether or not the settlement agreement bars issues raised in the amended complaint is not the subject of an NOI. This Order does not bar Berkeley from making other motions regarding the settlement agreement's applicability. However, the issues in Student's complaint are not deemed insufficient based upon the settlement agreement.

Next, Berkeley contends that Student's issue 1 is insufficient because it does not contain an allegation or supporting facts that Student's eligibility for a general education after school program is necessary to provide him a free appropriate public education. This is an evidentiary question that Student will address should the matter proceed to a due process hearing. The issue as pled is deemed sufficient.

Finally, Berkeley contends that Student's issues 2, 3, 5, and 6, are insufficient because they do not include specificity regarding when these violations allegedly occurred. Neither these issues, as alleged nor the facts supporting the issues, include specificity regarding when the violations allegedly occurred. For example, in issue 5 Student claims that Berkeley failed to timely provide an independent educational evaluation. There are no facts in the complaint regarding when Parent requested the IEE, what type of IEE was requested, or Berkeley's response to the request. Accordingly, these issues lack the specificity necessary to give Berkeley an awareness and understanding of the issues forming the basis of the complaint.

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. Issues 1 and 4 of Student's amended complaint are sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).

2. Issues 2, 3, 5, and 6 of Student's amended complaint are insufficiently pled under title 20 United States Code section 1415(c)(2)(D).

3. Student shall be permitted to file a second amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).[2]

4. The second 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 second amended complaint, the hearing shall proceed only on Issues 1 and 4 of Student's amended complaint.

DATE: January 28, 2016

/s/

JOY REDMON
Administrative Law Judge
Office of Administrative Hearings

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