BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SAN GABRIEL UNIFIED SCHOOL DISTRICT AND GARVEY SCHOOL DISTRICT	OAH Case No. 2019011055 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On January 28, 2019 Parent on behalf of Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming San Gabriel Unified School District and Garvey School District as respondents. On February 12, 2019, Garvey 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.)

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,

[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).

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.) "[A] response filed by an agency shall not preclude the local educational agency from asserting that the parent's due process complaint notice was insufficient where appropriate." (20 U.S.C. 1415(c)(2)(B)(i)(II).)

DISCUSSION

The allegations of Student's complaint are confusing. Student alleges that San Gabriel and Garvey "failed to offer, implement and provide a free, appropriate public education to [Student]" in allegations A through E. It is unclear from this wording whether Student is pleading a failure to implement an IEP, because Student has pled a failure to implement FAPE. Reference to the body of the complaint fails to clarify the question as no facts are pled describing a failure to implement any IEP. As a result, the districts are not put on notice of how to prepare for the hearing and to participate in resolution sessions and mediation.

ORDER

1. Issues A, B, C, D and E of Student's complaint are insufficiently pled under title 20 United States Code section 1415(c)(2)(D).

2. Issue F of Student's complaint is sufficiently pled.

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

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

5. If Student fails to file a timely amended complaint, the hearing shall proceed on issue F.

IT IS SO ORDERED.

DATE: February 15, 2019

DocuSigned by:
Penelope S. Pahl
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PENELOPE S. PAHL
ADMINISTRATIVE LAW JUDGE
OFFICE OF ADMINISTRATIVE HEARINGS