BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. MONROVIA UNIFIED SCHOOL DISTRICT.	OAH Case No. 2016110954 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On November 28, 2016, Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming Monrovia Unified School District. On December 8, 2016, District 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, *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.)

DISCUSSION

Student's complaint alleges two claims in the complaint, however only Issue One is an issue for hearing.[2] Issue One is insufficiently pled as discussed below.

Student's Issue One alleges District failed to provide Student with an appropriate educational program at all times over the last two years (November 29 2014 through November 29, 2016). Student's complaint specifically references only District's offer of a free appropriate public education made at the November 4, 2016 individualized education program team meeting. In claiming denial of FAPE over the last two years, the complaint indirectly refers to previous unspecified IEPs, Student fails to provide any information to identify which IEP, when the alleged violation occurred, and what specifically prevented Student from obtaining educational benefit.

Issue One alleges District failed to respond to Student's August 24, 2016 request for an independent education evaluation in the area of occupational therapy, but fails to allege when District assessed or even if District assessed Student in the area of occupational therapy.

Issue One alleges that Student is owed compensatory time for recreational therapy which was not included in the November 4, 2016 IEP, yet Student provides no information to explain why Student was owed compensatory services or why compensatory services should be included in his IEP.

Issue One alleges District failed to appropriately assess Student, but fails to identify when District assessed and which assessment(s) was flawed. Further Student alleges District failed to assess in all areas of suspected disability but fails to identify the area(s) which District failed to assess, and the time frame in which such assessment(s) should have occurred.

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[2] Student's Issue Two is a request for remedy.

Issue One alleges District failed to include all necessary individuals at all relevant IEP team meetings. However, Student does not identify which specific IEP team meetings are in question or which mandatory member(s) were not present.

Issue One alleges District failed to ensure that Parents were members of the group that ultimately made decisions on Student's educational placement. Student fails to identify when this alleged violation occurred and what placement was in question.

Student's complaint is insufficiently pled in that it is overly vague and fails to provide District with the required notice of a description of the problems and the facts relating to the problems.

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 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.

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

DATE: December 12, 2016

DocuSigned by:
Judith Pasewark
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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.