BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. YUBA CITY UNIFIED SCHOOL DISTRICT, SUTTER COUNTY SPECIAL EDUCATION LOCAL PLAN AREA, AND SUTTER COUNTY SUPERINTENDENT OF SCHOOLS.	OAH Case No. 2018100680 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On October 15, 2018, Parent on behalf of Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming Yuba City Unified School District, Sutter County Special Education Local Plan Area, and Sutter County Superintendent of Schools (Respondents). On October 5, 2018, Sutter County Superintendent and Sutter County SELPA filed a Notice of Insufficiency as to Student's complaint. On October 11, 2018, Yuba City filed a joinder to the NOI.

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

[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).

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

Student's complaint alleges five claims, one of which is sufficient and the four remaining claims are insufficient. Issue 2 is sufficiently pled to put Respondents on notice as to the basis of Student's claim. Student alleges a failure on the part of Respondents to provide a 1:1 aide to support Student in the area of academics. Student claims he has requested the support for approximately 18 months but has been denied. In construing the pleading requirements liberally, the complaint sufficiently identifies the problem and adequate related facts about the problem to allow Respondents to respond to the complaint and to prepare for and fully participate in a resolution session and hearing.

Issues 1, 3, 4, and 5 are not pled sufficiently to provide Respondents with an awareness and understanding of the issues forming the basis of the complaint. Issue 1 claims Respondents refused to provide yearly payments for Student's education for nearly two years. However, Student's complaint fails to allege any facts explaining Respondent's responsibility to provide such payments either by way of a settlement agreement or as called for in Student's individual education program. Furthermore, Student's complaint as to Issue 1 fails to allege facts related to the identification, evaluation, or educational placement of Student or the provisions of a free appropriate public education.

Similarly, a fair reading of Issues 3, 4, and 5 of Student's complaint allege a failure to have a complete plan for Student's academic needs and lack of care and the need for a different attitude on the part of Respondents regarding his academic needs. However, Issues 3, 4, and 5 as written do not identify an IEP at issue and fail to provide an adequate description of when alleged violations on the part of Respondents occurred or how any alleged violations relates to the identification, evaluation, or educational placement of Student or the provisions of a FAPE. As a result, the complaint does not provide

Respondents with sufficient information to adequately prepare for and participate in a resolution session and hearing to address those issues. Therefore, Student's complaint is insufficient as to Issues 1, 3, 4, and 5.

Among Student's proposed resolutions is reimbursement for educationally related expenses and a 1:1 aide to be assigned to Student. A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (20 U.S.C. §1415(b)(7)(A)(ii)(IV).) The proposed resolutions stated in Student's complaint are sufficiently defined and meet the statutorily required standard of stating a resolution to the extent known and available to him at the time.

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

2. Issues 1, 3, 4, and 5 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 2 in Student's complaint.

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

DATE: October 18, 2018

DocuSigned by:

Rommel P. Cruz

ROMMEL P. CRUZ
Administrative Law Judge
Office of Administrative Hearings