

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN LORENZO VALLEY UNIFIED
SCHOOL DISTRICT.

OAH Case No. 2016051213

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On May 23, 2016, Parent on behalf of Student filed a Due Process Hearing Request¹ (complaint) with the Office of Administrative Hearings naming San Lorenzo Valley Unified School District.² On May 27, 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.)

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).

² The complaint also names Student's math teacher as a party.

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 four claims in the complaint, some of which three are insufficient and one which is sufficient. The issues are discussed below.

Issues One, Two, and Three

Issues One and Two allege that Student’s seventh grade math teacher has emotionally and verbally abused Student, causing him to be suicidal, have post-traumatic stress disorder, panic attacks, and anxiety. Issue Three alleges that the District “protected” the teacher. As a resolution for these three issues, Student requests that District have the teacher evaluated by a mental health specialist, and for the District to pay monetary damages. The issues fail to allege sufficient facts (such as dates, and the conduct complained of) for District to prepare for hearing or participate in resolution session or mediation.³

Issue Four

Issue Four alleges that District never offered to assess Student for a Section 504 or special education assessment when District was aware of Student’s struggles, and knew he had a disability as he formerly had an IEP and 504 plan. Here, Student is alleging that Student has failed in its “child find” obligation. Student has alleged sufficient facts to put District on notice as to what he is alleging so that the District can prepare for hearing and participate in resolution session and mediation.

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

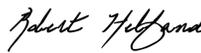
³ In its NOI, District argues that Issues One, Two and Three are not within the jurisdiction of OAH. A motion to dismiss is the proper method of alleging that OAH lacks jurisdiction to hear issues.

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 Four is sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).
2. Issues One, Two, and Three 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).⁴
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 Four Student's complaint.

DATE: May 31, 2016

DocuSigned by:

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ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings

⁴ The filing of an amended complaint will restart the applicable timelines for a due process hearing.