BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

POWAY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021020114

ORDER OF DETERMINATION OF PARTIAL INSUFFICIENCY OF DUE PROCESS COMPLAINT

FEBRUARY 19, 2021

On February 2, 2021, Parents on behalf of Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Poway Unified School District. On February 17, 2021, Poway Unified School District filed a Notice of Insufficiency as to the complaint.

APPLICABLE LAW

The named parties have the right to challenge the complaint's sufficiency. (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: (1) describes the problem relating to the proposed change regarding the Student's identification, evaluation, or educational placement, or providing the Student a free appropriate public education; (2) includes facts about the problem; and (3) includes a proposed resolution 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 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 six issues. The issues are discussed below.

Issue One alleges Poway Unified School District failed to remove a study skills service from Student's individualized education program, referred to as IEP, as requested by Parents. The complaint alleges Parents and Poway Unified School District signed an agreement in the summer of 2019 in which Poway Unified School District agreed to provide a study skills service to Student. The complaint alleges the study skills service was not appropriately implemented in the least restrictive environment and starting in January 2020 Parents made multiple requests to have the study skills services removed from Student's IEP. The complaint further alleges that Poway Unified School District agreed to remove the study skills service in an IEP team meeting held in the fall of 2020, but then reinstated the services. Although the complaint does not allege the specific IEP or IEP team meeting in which Poway Unified School District agreed to remove the study skills service, the facts are sufficiently pled to provide Poway Unified School District notice of the basis of the dispute. Therefore, Issue One is sufficiently pled to inform Poway Unified School District of the nature of the claim.

Issue Two alleges that Parents did not provide Poway Unified School District informed consent in August 2019 to the study skills service. The complaint alleges Poway Unified School District did not inform Parents that the study skills service could be provided in the general education setting, and generally indicates that Parents

disagreed with how the service was implemented. The complaint is sufficiently pled to inform Poway Unified School District that Parents did not understand the offer of the study skills service or how it would be implemented. Therefore, Issue Two is sufficiently pled to inform Poway Unified School District of the nature of the dispute.

Issue Three alleges that Poway Unified School District did not disclose to Parents that the study skills service offered to Student could be offered in a general education setting. Like Issue Two, Issue Three alleges that Parents did not understand the offer of the study skills service or how it would be implemented. Therefore, Issue Three is sufficiently pled to inform Poway Unified School District of the nature of the dispute.

Issue Four alleges that Poway Unified School District is acting punitively towards Parents. Issue Four contains no facts describing how Student was denied a free appropriate public education as a result of the alleged conduct. Therefore, Student's Issue Four is insufficiently pled for failure to state sufficient facts.

Issue Five alleges Poway Unified School District is not offering the study skills service in the least restrictive environment and therefore Student is not receiving a FAPE. Student's allegation is not clear as to how the requested service was not offered in the least restrictive setting. Therefore, Student's Issue Five is insufficiently pled for failure to state sufficient facts. Student may correct this insufficiency by describing how the service was implemented and in what setting, and how implementation of the service denies Student a free appropriate public education.

Issues Six alleges that Poway Unified School District, through its attorney, interfered with Parents' ability to participate in IEP team meetings. The complaint does not identify the dates of the IEP team meetings or describe specific facts regarding how any conduct by Poway Unified School District or its representatives interfered with

Parents' meaningful participation in the development of Student's IEP. Therefore, Student's Issue Six is insufficiently pled for failure to state sufficient facts. Student may correct this insufficiency by providing detailed facts about the IEP team meetings, including the dates of the meetings, and provide facts explaining how Parents' were denied the opportunity to participate in the development of Student's IEP.

A parent without 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 One, Two and Three of Student's complaint are sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. Issues Four, Five and Six are insufficiently pled under section 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. 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 complaint will be dismissed.

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

IT IS SO ORDERED.

Jennifer Kelly

Jennifer Kelly

Administrative Law Judge

Office of Administrative Hearings