BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

CLOVIS UNIFIED SCHOOL DISTRICT

AND CRESCENT VIEW WEST PUBLIC

CHARTER SCHOOL.

OAH CASE NUMBER 2023020131

ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT AND ORDER DISMISSING NON-JURISDICTIONAL CLAIMS

MARCH 07, 2023

On February 03, 2023, Parent on behalf of Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Clovis Unified School District and Crescent View West Public Charter School. On February 17, 2023 Student filed a motion to amend, which was granted on

February 21, 2023. On March 6, 2023, Crescent View filed a Notice of Insufficiency as to the first amended 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).

Title 20 United States Code section 1415(k)(3) permits a party to request an expedited hearing for specific reasons. Specifically, an expedited hearing can be requested to appeal to appeal a disciplinary change of placement, such as placement in an alternative education setting or a manifestation determination regarding student conduct. This section requires an expedited hearing start within 20 school days from the hearing request. There is no provision for expedited hearings under section 1415(k) to test the complaint's sufficiency. Indeed, there is insufficient time to complete the NOI process in expedited hearings. However, in its Notice of Insufficiency, Crescent View states it is only seeking a ruling on sufficiency on the non-expedited issues.

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

NOTICE OF INSUFFICIENCY

Crescent View argues that the Student's First Amended complaint is vague as to facts against Crescent View, and that the Complaint fails to please sufficient facts to permit Crescent View to determine its response and defense.

The facts alleged in Student's First Amended complaint against Crescent View are clearly stated on page nine of the First Amended complaint. Student pleads discreet issues against Clovis Unified, issues one through four, and one issue, number five, against Crescent View. The complaint also pleads specific remedies of compensatory

education, training and independent examinations against both Clovis Unified and Crescent View. The First Amended complaint sufficiently identifies the issues and adequate facts about the problem to permit Crescent View to respond and participate in a resolution session and mediation.

Therefore, Student's First Amended complaint and statement of the one issue against Crescent View is deemed sufficient.

JURISDICTIONAL CLAIMS

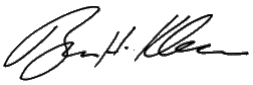
Finally, Parent and Student plead that they seek "to exhaust their remedies under the IDEA that would also be available for violations of Student's federally protected rights under the Americans with Disabilities Act ("ADA"), 42 U.S.C. §12132, and Title V of the Rehabilitation Act of 1973, 29 U.S.C §794 ("Section 504"), for Respondent's discriminatory acts as described herein." Crescent View argues that student vaguely alleges claims of violations of other statutes that OAH has no jurisdiction to adjudicate, and it is unclear if these allegations are being alleged against it. For example, Student refers to "respondent" in the singular. In any event, Crescent View argues that OAH should dismiss those claims based on jurisdictional grounds.

Crescent View is correct that OAH does not have jurisdiction to decide claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), Section 1983 of Title 42 United States Code, the Americans with Disability Act (42 U.S.C. §§ 1201, et seq.), or the Unruh Civil Rights Act (Civ. Code, § 51). Accordingly, any claims related to the cited statutes are dismissed with prejudice.

ORDER

1. The complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.
3. All claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), Section 1983 of Title 42 United States Code, the Americans with Disability Act (42 U.S.C. §§ 1201, et seq.), or the Unruh Civil Rights Act (Civ. Code, § 51) are dismissed with prejudice.

IT IS SO ORDERED.



Brian H. Krikorian

Administrative Law Judge

Office of Administrative Hearings