BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

BEVERLY HILLS UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2019120456

ORDER OF DETERMINATION OF PARTIAL SUFFICIENCY OF DUE PROCESS COMPLAINT

On December 11, 2019, Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Beverly Hills Unified School District. On December 26, 2019, Beverly Hills 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 an enumerated four claims in the complaint, some of which are sufficient and some which are insufficient. The issues are discussed below.

Student's complaint does not allege any circumstances to enlarge the statute of limitations and therefore only applies to claims properly pleaded within the two-year statute of limitations. (20 U.S.C. § 1415(b)(6)(B), (f)(3)(C) &(D); 34C.F.R. § 300.507(a)(2); Ed. Code, § 56505, subd. (*l*).) The remedies Student requested concern reimbursement for expenses incurred between January 2018 and June 2019, which aligns with Student's claims within the two-year statute of limitations.

Student's complaint failed to comply with title 20 United States Code section 1415(b)(7)(A)(ii)(II) by not specifying Student's address and name of the school he attends. However, the totality of the circumstances suggest Beverly Hills is well aware of where Student resides. While Student did not state what school he currently attends, this information does not, in this case, appear critical to understanding the bases of Student's complaint or the remedies he seeks.

Student alleges as his first issue, "Did the District assess in all areas of suspected disability by failing to thoroughly evaluate Student's deficits in a manner that would provide sufficient information to understand the depth and significance of Student's multiple areas of need?" The only factual assertion included regarding assessments is that "the District failed to assess in all areas of suspected disability, especially vision and health." Student did not allege facts indicating in what areas of suspected disability Beverly Hills failed to assess, or what types of evaluations Beverly Hills should have conducted, or whether the basis of Student's complaint is an alleged inadequacy of specific assessments Beverly Hills did conduct. Finally, Student suggests that at all times since 2010, Beverly Hills failed to re-assess Student, and refused to re-assess Student after Parents provided a letter from Dr. McLin, "a privately retained psychologist," in January 2018. But Student does not specifically allege when Beverly Hills should have

assessed Student. Therefore, Student has failed to state sufficient facts supporting this claim, and the claim is insufficient.

Student alleges as his second issue, "Did the District deny Student a FAPE by not providing him with appropriate goals, services, accommodations and strategies designed to help him access the curriculum in a meaningful way in order to achieve educational benefit?" Student alleges that "as of November 9, 2017, Student had goals in the areas of transition, work completion, social emotional, reading comprehension, math, written expression, attention behavior, and executive functioning." He also alleges he "had an IEP that did not confer educational benefit or allow Student to successfully access the curriculum for many years. . . . [T]he goals in Student's IEP's lack clarity and strategies to facilitate Student's mastery of each goal area. Student has pleaded facts sufficient to understand that Student contends Beverly Hills denied Student a free appropriate public education, referred to as a FAPE, by failing in the individualized educational programs developed within the two-year statute of limitations to develop appropriate goals due to each goal's lack of clarity. Issue 2 is sufficiently pleaded to put Beverly Hills on notice as to the basis of Student's claim regarding goals, but nothing else.

Student alleges as his third issue, "Were Student's programming and services sufficient to confer educational benefit during the relevant statutory period which began in December 2017 until Student was unilaterally placed by parents at New Roads Academy when the District failed and refused to fund Westmark School as promised by the District's Director of Special Education on January 3, 2018?" Student alleges Parents provided Beverly Hills with a letter from Dr. McLin, "a privately retained psychologist," recommending Student's placement be changed, and that Student be placed on an independent study program until an appropriate placement was identified. Student

alleges Beverly Hills convened an individualized education program team meeting to discuss Dr. McLin's letter and recommendation, but did not change Student's placement. Student has pleaded sufficient facts to understand that Student contends Beverly Hills denied Student a FAPE since January 2018 by failing to offer Student an appropriate placement. Issue 3 is sufficiently pleaded to put Beverly Hills on notice as to the basis of Student's claim regarding placement, but nothing else.

Student alleges as his fourth issue, "Was the District's feigned concerned about keeping Student safe a rouse [*sic*] to entice parents to remove him from the District after District personnel colluded with others to publicize an event involving Student? Does District's conduct rise to the level of a denial of FAPE?" Student alleges Beverly Hills' Director of Special Education Laura Chism informed Parents Beverly Hills was going to place Student at Westmark School, a nonpublic school, and that all paperwork necessary to transfer Student there was completed. Student alleges Parents withdrew him from Beverly Hills to send him to Westmark. However, based on Student's requested remedies of reimbursement for an application fee to and tuition at New Roads Academy between March 2018 and June 2019, and the fact Student calls Ms. Chism's representations a ruse, it seems Beverly Hills did not fund Student's placement at Westmark and Parents then placed Student at New Roads. Student fails to allege any facts that distinguish Issue 4 from what is sufficiently pleaded in Issue 3, that Beverly Hills denied Student a FAPE by failing to offer him an appropriate placement. Therefore, Student has failed to state sufficient facts supporting this claim, and the claim is insufficient.

ORDER

1. Claims regarding the adequacy of the goals in Student's individualized education programs developed within the two-year statute of limitations, and

the appropriateness of the placement(s) Beverly Hills offered since January 2018, stated within Student's Issues 2 and 3, are sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).

2. Any other claims are insufficiently pleaded 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. 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. The filing of an amended complaint will restart the applicable timelines for a due process hearing.
5. If Student fails to file a timely amended complaint, the hearing shall proceed only on the issues identified in this Order.

IT IS SO ORDERED.

DATED: December 27, 2019

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Kara Hatfield
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Kara Hatfield
Administrative Law Judge
Office of Administrative Hearings