BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

EVERGREEN SCHOOL DISTRICT.

OAH CASE NUMBER 2020120822

ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

DECEMBER 31, 2020

On December 28, 2020, 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 Evergreen School District. On December 30, 2020, Evergreen filed a timely 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 three insufficiently pled claims, identified as Problems 1, 2, and 3. Problem 1 contends Evergreen was negligent and endangered Student by allegedly failing to follow "protocols and rules" related his medical needs. However, the complaint fails to sufficiently describe what "protocols and rules" Evergreen was required to follow to support Student's medical needs. For example, what was required of Evergreen to respond to Student's seizures in which it allegedly failed to do? Further, the complaint does not describe the period of these alleged violations and how Evergreen's alleged conduct deviated from any of Student's individualized education programs, called IEP, which denied Student a free appropriate public education. Accordingly, Problem 1 of the complaint lacks a sufficient description of the problem to provide Evergreen with an awareness and understanding of Problem 1. Therefore, Problem 1 is insufficiently plead.

Problem 2 of the complaint similarly lacks a sufficient description of the problem. The complaint notes regression and no behavior goal or intervention plan. It also states that Student was placed in a mild/moderate classroom without justification and a lack of direct communication between an aide and Parent. However, the complaint fails to describe Student's regression or explain why a behavior goal or intervention plan is needed. The complaint does not describe Student's behaviors that would necessitate a behavior goal or intervention plan. The complaint also fails to describe why a mild/moderate classroom is not appropriate for Student or how the lack of direct communication between the aide and Parent denied Parent an opportunity to meaningfully participate in Student's education or deprived Student with educational opportunities. Accordingly, the complaint lacks a sufficient description of the alleged

violations to provide Evergreen with an awareness and understanding of Problem 2. Therefore, Problem 2 is insufficiently plead.

Problem 3 the complaint claims discrimination towards "Asian Special Need kids" and alleges Student was denied enrollment at a special needs school near Student's home. However, the complaint fails to describe when the alleged violations occurred, or why the special needs school near the home is an appropriate placement for Student. The complaint does not describe how Parent's preferred school is able to meet Student's needs.

Problem 3 also discusses a reduction in speech/language impairment and autism programs, the absence of a full assessment in the area of autism before determining eligibility and alleges only a portion of one-to-one aid services was provided to Student. However, these statements are vague and fails to describe what specific level of services Student was entitled to and how Evergreen allegedly failed to provide the services, and how the assessment in the area of autism was deficient. Accordingly, Problem 3 of the complaint lacks a sufficient description of the problems to provide Evergreen with an awareness and understanding of the alleged violations. Therefore, Problem 3 is insufficiently plead.

Student's proposed resolutions are also insufficiently plead, as the complaint fails to clearly identify the remedies Student seeks. 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 resolution stated in Student's complaint is not well-defined. If Student seeks a particular remedy, such as the frequency and duration of a service, or placement in a specific school or program, the complaint should clearly state so.

MEDIATOR ASSISTANCE FOR NON-REPRESENTED PARENTS: 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. Student's complaint is insufficiently pled under section title 20 United States Code 1415(c)(2)(D).
2. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).
3. 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.
4. If Student fails to file a timely amended complaint, the complaint will be dismissed.
5. All dates previously set in this matter are vacated.

IT IS SO ORDERED.

Rommel P. Cruz

Rommel P. Cruz
Administrative Law Judge
Office of Administrative Hearings