BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

BEVERLY HILLS UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2019120456

ORDER OF DETERMINATION OF PARTIAL INSUFFICIENCY OF SECOND AMENDED DUE PROCESS COMPLAINT

FEBRUARY 12, 2020

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, referred to as Beverly Hills. On December 26, 2019, Beverly Hills filed a Notice of Insufficiency as to the complaint.

On December 27, 2019, OAH issued an Order of Determination of Partial Sufficiency of Due Process Complaint. On January 9, 2020, Student filed an amended complaint. On January 22, 2020, Beverly Hills filed a Notice of Insufficiency as to the amended complaint.

On January 27, 2020, OAH issued an Order of Determination of Partial Sufficiency of Amended Due Process Complaint. The Order determined that Issue 2, Issue 3, and Issue 4 are sufficiently pled under title 20 U.S.C. section 1415(b)(7)(A)(ii) to put Beverly Hills on notice of claims arising within the two-year statute of limitations, as identified in the Order. The Order further determined that Issue 1 was insufficiently pled under title 20 United States Code section 1415(c)(2)(D), and permitted Student to file a second amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II) not later than 14 days from the date of the Order.

On February 3, 2020, Student filed a second amended complaint. On February 10, 2020, Beverly Hills filed a Notice of Insufficiency to Second 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).

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 four issues. OAH's January 27, 2020 Order, found Issue 1 was insufficiently pled, and provided Student with the information required to correct the deficiencies in an amended complaint sufficient to put Beverly Hills on notice as to the basis for Student's claim. The Order specified that Student failed to identify the areas of suspected disability Beverly Hills should have assessed, or what types of assessments Beverly Hills should have conducted. Without this information, Beverly Hills is not in a position to file an adequate response to Student's complaint or participate in mediation as it does not know the assessment areas it allegedly failed to adequately assess.

Student's second amended complaint again states that Beverly Hills failed to assess in all areas of suspected disability. The second amended complaint contains some new facts, including that Student has a significant visual processing disorder, deficits in mechanics and syntax, and struggles in math and reading. However, the second amended complaint fails to provide information about what areas of suspected disability Beverly Hills failed to assess, what types of evaluations Beverly Hills should have conducted, such as a visual processing assessment or identify the Beverly Hills' assessment that is not adequate, and when Beverly Hills should have assessed Student. Student has had two opportunities to provide information to clarify Issue 1, but has failed to do so. Accordingly, Issue 1 is deemed insufficiently pled and is dismissed from Student's second amended complaint.

OAH's January 27, 2020, Order found that Issue 2, Issue 3 and Issue 4 are sufficiently pled to put Beverly Hills on notice of Student's claims. Notwithstanding this Order, Beverly Hills continues to challenge the sufficiency of these issues, and incorrectly interprets OAH's Order has requiring Student to allege additional facts pertaining to these issues. Issue 2, Issue 3 and Issue 4 state enough information to provide Beverly Hills an awareness and understanding of the issues forming the basis of the complaint to prepare for the hearing and participate in resolution sessions and mediation. As previously determined in OAH's January 27, 2020 Order, Issue 2, Issue 3 and Issue 4 are deemed sufficiently pled.

ORDER

1. Issue 1 of Student's second amended complaint is insufficiently pled under title 20 United States Code section 1415(c)(2)(D). Student failed to correct the deficiencies in Issue 1 as required by OAH's two prior orders, and thereby Issue 1 is hereby dismissed.

2. The hearing shall proceed only on Student's claims in Issue 2, Issue 3 and Issue 4.
3. Prehearing conference and hearing dates in this matter are confirmed.

IT IS SO ORDERED.

DocuSigned by:
Jennifer Kelly
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Jennifer Kelly
Administrative Law Judge
Office of Administrative Hearings