BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: STUDENT, v. SAN DIEGO UNIFIED SCHOOL DISTRICT, MOUNTAIN EMPIRE UNIFIED SCHOOL DISTRICT, GROSSMONT UNION HIGH SCHOOL DISTRICT.	OAH Case No. 2017100067 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On September 29, 2017, Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming San Diego Unified School District, Mountain Empire Unified School District, and Grossmont Union High School District. On October 16, 2017, Grossmont filed a Notice of Insufficiency as to Student's complaint. On October 17, 2017, Student filed an opposition.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint. (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).

The complaint is deemed sufficient unless a party notifies the Office of Administrative Hearings and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements. (20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).)

A complaint is sufficient if it contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate

[1] A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 U.S.C. section 1415(b)(7)(A).

public education to the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem 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 was filed on September 29, 2017. Student served his complaint on Grossmont via United States Postal Mail on Friday, September 29, 2017. Grossmont does not indicate in its NOI when it received the complaint. However, the next business day was Monday, October 2, 2017. Grossmont's NOI was dated, filed with OAH, and served on October 16, 2017, which is within 15 days after Grossmont would have received the complaint via U.S. mail. Therefore, Grossmont's NOI was timely filed.

As to Grossmont, the complaint alleges failures by Grossmont to admit Student in Mount Miguel High for the 2017-2018 school year and to assess Student in all areas of suspected disabilities, convene and individualized educational program team meeting, and offer Student an IEP. The complaint identifies Student as the petitioner. He is 18 years old and the complaint asserts he transferred his educational rights to his paternal grandmother when he turned 18. Paragraph three of the complaint provides relevant information of the petitioner/Student, which include an address and the name of his paternal grandmother. Grossmont acknowledges in its NOI that the address is within its boundaries. Student's mother has been in a coma since he was 12 years old and Student has lived with his paternal grandparents. He is currently detained in juvenile hall. The complaint claims Grossmont denied Student an IEP in November 2013, but makes no assertion as to the tolling of the two-year statute of limitations, nor does the complaint raise the issue that Grossmont denied Student a FAPE in 2013 for purposes of this proceeding.

The complaint alleges Grossmont denied Student a free appropriate public education by denying Student admission for the "Fall 2017 school year at Mount Miguel, and

a. refusing to assess in all areas of suspected disability, including, but not limited to, cognitive deficits, anxiety, fine motor, memory training, pragmatic language, task completion, academic deficits (reading, math and written language), test taking, organization and social emotional including an Educationally Related Mental Health Services (ERMHS) assessment;

b. failing to convene an IEP team meeting, and

c. failing to offer an IEP with services reasonably calculated to enable Student to progress.

To support his contentions as to the alleged violations, Student's complaint, as it relates to Grossmont, claims that Grossmont rejected Student's request for admission in to Mount Miguel High "because he allegedly had completed 4 years of high school, even though he only completed 122 out of 208 courses attempted, and had a Total GPA of 1.35." Paragraph 19 of the complaint identifies Grossmont's failures as its refusal of Student's application for admission for Fall 2017 on the basis that Student had completed four years of high school, although records show he had not completed courses.

The complaint describes Student's academic struggles during the 2015-2016 and 2016-2017 school years. Student failed all but one course, physical education, in the Spring 2017 semester. Under the Legal Argument section of the complaint, Student does not allege any violations on the part of Grossmont until he attempted to enroll for the 2017-2018 school year.

Grossmont contends in its NOI that Student's complaint fails to provide a sufficient description of Student's address or educational rights holder and as such, it is unclear whether Student's parent or legal guardian resides within Grossmont's boundaries. Also, Grossmont argues that the complaint fails to assert any facts as to why the two-year statute of limitations should be tolled with respect to any violations in 2013. Additionally, Grossmont contends that Student's complaint fails to allege a sufficient description of the problems or facts related to any alleged denial on the part of Grossmont to assess Student, convene an IEP team meeting, or offer an IEP for Student.

The complaint sufficiently identifies Student's residence to be within Grossmont's boundaries. Student is 18 years old. His address of residence provided in the complaint is within Grossmont's boundaries. His educational rights holder, who Student has lived with since he was 12 years old, resides at the same address.

The complaint as to Grossmont, is limited to alleged violations that stems from the alleged failure to admit Student in to Mount Miguel High in June 2017. No allegations of violations in 2013 are being raised by Student's complaint in this due process request.

Student's complaint is sufficiently pled in that it provides Grossmont with the required notice of a description of the problem and the facts relating to the problem. The complaint describes Student's academic struggles in the prior two school years leading up to his alleged effort to enroll in Mount Miguel High. The complaint also alleges that based on assessments, Student may have problems related to reading comprehension, antisocial behavior, impulsivity and aggression. The complaint claims Student has only completed 122 out of 208 courses.

The complaint contends that based on Student's records, Grossmont should have admitted Student in to Mount Miguel High and assessed him for special education and related services. The complaint contends Student resides within the boundaries of Grossmont and Grossmont's failure to admit and assess denied Student a FAPE. The compliant contains enough facts relating to these claims to provide Grossmont with an awareness and understanding of the issues forming the basis of the complaint. In construing the complaint liberally, the complaint sufficiently identifies the issues and adequate related facts about the problem to permit Grossmont to respond to the complaint and prepare for and fully participate in a resolution session and mediation. If Grossmont contends that Student does not reside within its boundaries under special education residency laws, the proper recourse is to file a motion to dismiss and not a notice of insufficiency.

Among Student's proposed resolutions is that Grossmont, along with the other two Districts, provide Student compensatory education, fund an independent educational evaluation, and fund out-of-state residential tuition and services. 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 resolutions stated in Student's complaint are well-defined requests that meet the statutorily required standard of stating a resolution to the extent known and available to Student at the time.

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.

DATE: October 18, 2017

DocuSigned by:
Rommel P. Cruz
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ROMMEL P. CRUZ
Administrative Law Judge
Office of Administrative Hearings