BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. BURBANK UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018090148 ORDER OF DETERMINATION OF SUFFICIENCY IN PART OF DUE PROCESS COMPLAINT

On September 5, 2018, Parents on behalf of Student filed a Due Process Hearing Request with the Office of Administrative Hearings, naming Burbank Unified School District. On October 9, 2018, OAH granted the parties' joint request to continue the hearing dates. Student filed a corrected amended complaint with OAH on January 9, 2019, naming Burbank. On January 10, 2019, OAH issued an order granting Student's request to amend his complaint. On January 25, 2019, Burbank filed a Notice of Insufficiency as to Student's amended complaint.

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).

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 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 alleges five claims in his amended complaint. Student's issues one, four and five are sufficiently pled to put Burbank on notice as to the basis of Student's claims. For example, issue one alleges that Burbank failed its child find obligation to Student since May 21, 2018. On that date, Student asserts that Burbank failed to provide Parents' a copy of their procedural safeguards or to consider the impact of Student's vision problems during a manifestation determination review. Student's issue four alleges that Burbank failed to provide Student an assessment plan within 15 days of Parents' request for special education assessments in June, August, September, and November, 2018. Issue five claims that Burbank failed to offer Student special education eligibility, following Burbank's psycho-educational assessments in January and February 2017. Each of these allegations provides enough information to provide Burbank an awareness and understanding of the issues forming the basis of the claims.

Student's amended complaint is insufficiently pled as to issues two and three. Student's issue two asserts that Burbank discriminated against Student based upon his disability, in violation of the Americans with Disabilities Act. Issue three claims that Burbank violated Student's section 504 rights.[1] These issues fail to provide Burbank with the required notice of a description of a problem that falls under OAH's jurisdiction and the facts relating to the problems.

ORDER

1. Issues 1, 4, and 5 of Student's amended complaint are sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).

[1] Section 504 of the Rehabilitation Act of 1973. (29 U.S.C. § 701 et seq. [section 504].)

2. Issues 2 and 3 of Student's amended complaint are insufficiently pled 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).[2]

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.

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues 1, 4, and 5, in Student's amended complaint.

DATE: January 28, 2019

DocuSigned by:
Paul H. Kamoroff
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PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings

[2] The filing of an amended complaint will restart the applicable timelines for a due process hearing.