BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT and ASPIRE PACIFIC ACADEMY.	OAH Case No. 2019010545 ORDER DETERMINING ISSUE ONE SUFFICIENT, ISSUES TWO AND THREE INSUFFICIENT, WITH LEAVE TO AMEND UNEXPEDITED ISSUES ONLY

On January 15, 2019, Student filed a due process hearing request[1] (complaint) with the Office of Administrative Hearings naming Aspire Pacific Academy.[2] On January 18, 2019, Aspire Pacific filed a notice of insufficiency as to Student's 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).

Title 20 United States Code section 1415(k)(3) permits a party to request an expedited hearing to appeal a decision regarding a disciplinary change of placement, such as placement in an alternative education setting or a manifestation determination regarding student conduct. This section requires an expedited hearing to occur within 20 school days of the date the hearing is requested. There is no provision similar to that in title 20 United States Code section 1415(c)(2)(A) for testing the sufficiency of a request for an expedited hearing pursuant to section 1415(k). Indeed, there is often insufficient time to complete the NOI process in expedited hearings.

[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).

[2] Los Angeles Unified School District is responsible for providing special education services to students at the charter school, and therefore OAH added it as a party.

A non-expedited 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 states three problems (also referred to as claims or issues) in the complaint. Student's first claim is that a manifestation determination meeting was held concerning a disciplinary matter of some sort involving Student. This will be referred to below as Issue One. Although no specifics are given as to the facts which led to disciplinary action being taken against Student, or a date when the manifestation meeting was held, he claims that the manifestation team should have found that the incident in question was a manifestation of his disability, and apparently did not. Undoubtedly Pacific Aspire would be aided in preparing for a resolution session, mediation, and hearing if additional facts were given, but there is no provision in special education law for an Administrative Law Judge to determine the sufficiency of a claim related to a disciplinary action and manifestation determination. Accordingly, it must be found that Student's Issue One is sufficiently plead. The expedited mediation, prehearing conference and due process hearing shall proceed as to this issue.

Student, in his second stated problem, Issue Two, appears to disagree with an individualized education program team recommendation that he be placed at a nonpublic school. Student does not state the date or dates when this IEP recommendation was made, and why he believes it is inappropriate for him. It does not appear that this is a claim which

must be determined on an expedited schedule. Therefore, it is found that the claim is not sufficiently plead because it does not contain enough information to permit Pacific Aspire to prepare for a resolution session, mediation, and hearing.

Student, in his third stated problem, Issue Three, claims that there was an IEP in the past which recommended some type of therapy for him, but the date of the IEP is not given. Student does not make it clear what type of therapy this is, since at the beginning of the statement of the problem he states, "DIS [designated instructional services]- OT [occupational therapy] services," but then student makes a reference in the paragraph below to a "mental health professional." It is unclear what type of therapy Student claims that he needs, and the date of the IEP which stated he was to be provided with it. It is also unclear when, or if, this service either was reduced or stopped, or whether a recommendation was made to reduce or stop it. It does not appear that this is a claim which must be determined on an expedited schedule. Therefore, it is found that the claim is not sufficiently plead because it does not contain enough information to permit Pacific Aspire to prepare for a resolution session, mediation, and hearing.

A parent who is not represented by 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. Issue One, in Student's complaint is sufficient because it is a claim related to discipline, pursuant to title 20 U.S.C. section 1415 (k), and is not subject to title 20 U.S.C. section 1415(b)(7)(A)(ii).

2. Issues Two, and Three of Student's 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).[3]

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.

[3] 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 Issue One, as an expedited matter.

DATE: January 23, 2019

DocuSigned by:
Rebecca Freie
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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings