BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

NEWPORT-MESA UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2019060916

ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT; ORDER DENYING MOTION TO DISMISS

On June 20, 2019, 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 Newport-Mesa Unified School District. On July 1, 2019, Newport-Mesa Unified filed a Motion to Dismiss, and in the alternative a Notice of Insufficiency as to the complaint.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education," and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the

identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a free appropriate public education to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified School. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

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.)

OAH does not have jurisdiction to decide claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), Section 1983 of Title 42 United States Code, the Americans with Disability Act (42 U.S.C. §§ 1201, et seq.), or the Unruh Civil Rights Act (Civ. Code, § 51). However, although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction such as, civil rights claims, section 504 claims, enforcement of settlement agreements, or incorrect parties, special education law does not provide for a summary judgment procedure.

DISCUSSION

SUFFICIENCY OF STUDENT'S COMPLAINT

Student alleges four claims, all listed under "Problem/Complaint #1" of his complaint. Three of his claims are insufficiently pled and one sufficiently pled. With respect to the first claim, Student alleges members of Newport-Mesa Unified's administration colluded with several of Student's service providers to discriminate

against him and denied him equal access to his education and educational providers. However, Student's complaint fails to describe with sufficient facts as to how the alleged collusion is related to a proposed initiation or change concerning the identification, evaluation, or educational placement of Student, or the provision of a free appropriate public education to Student under the IDEA. This claim is insufficiently pled in that it falls short of providing Newport-Mesa Unified with the required notice of a description of an alleged violation under the IDEA.

Furthermore, Student raised two more claims, both insufficiently pled. The complaint's second claim alleges Newport-Mesa Unified restricted Mother's communication with the school principal and Student's teacher. Student's third claim contends the June 2018 individualized education program team meeting was shut down by Newport-Mesa Unified's individualized education program coordinator. As to these claims, the complaint falls short of providing Newport-Mesa Unified with an awareness of the problems relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of Student, or the provision of a free appropriate public education to Student. The complaint fails to describe how Newport-Mesa Unified denied Student a free appropriate public education based on these allegations. Accordingly, the complaints second and third claims are insufficient.

However, the complaints fourth claim alleging Newport-Mesa Unified denied Mother an opportunity to meaningfully participate in the development of Student's IEP by "establishing strict time and verbal parameters" at the November 2018 IEP team meeting, impeding her ability to "express the problem and advocate for her son," is sufficiently pled. The complaint specifies the IEP team meeting of the alleged violation, and provides enough information regarding why Student believes Mother was denied an opportunity to meaningfully participate in the IEP process to provide Newport-Mesa

Unified with an awareness and understanding of the problem to prepare for the hearing and to participate in a resolution session. Accordingly, in construing the complaint liberally, the fourth claim is sufficient.

MOTION TO DISMISS

Newport-Mesa Unified contends Student's complaint should be dismissed in its entirety as the complaint raises claims of alleged discrimination which are outside OAH's jurisdiction. As to the first three claims, Newport-Mesa's motion to dismiss is moot, and therefore, denied, as those claims have been determined insufficiently pled.

As to the fourth claim, this claim is not facially outside OAH's jurisdiction. Whether Newport-Mesa Unified impeded Mother's ability to meaningfully participate in the development of Student's IEP at the November 2018 IEP team meeting is within OAH's jurisdiction and requires an evidentiary hearing. Accordingly, Newport-Mesa Unified's motion to dismiss is denied.

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 fourth claim in his complaint is sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).
2. Student's first, second, and third claims in his 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).
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. 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 the fourth claim in Student's complaint.
6. Newport-Mesa Unified motion to dismiss is denied.

IT IS SO ORDERED.

DATED: July 3, 2019

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Rommel P. Cruz
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Rommel P. Cruz
Administrative Law Judge
Office of Administrative Hearings