BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

WESTERN PLACER UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2019091085

ORDER DETERMINING COMPLAINT PARTIALLY SUFFICIENT

On September 26, 2019, Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Western Placer Unified School District. Student requested an expedited hearing and on October 1, 2019, OAH issued a scheduling order setting both expedited and non-expedited hearing dates. On October 3, 2019, Western Placer filed a Notice of Insufficiency as to the 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).

Title 20 United States Code section 1415(k)(3) permits a party to request an expedited hearing for specific reasons. Specifically, an expedited hearing can be requested to appeal to appeal 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 start within 20 school days from the hearing request. There is no provision for expedited hearings under section 1415(k) to test the complaint's sufficiency. Indeed, there is insufficient time to complete the NOI process in expedited hearings.

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 11 claims in the complaint. Western Placer argues Issues One, Three, Four, Seven, Eight, Nine, and part of Issue Ten are insufficient. Western Placer further argues that because some of the issues are insufficient Student's complaint should be dismissed in its entirety. As a preliminary manner Western Placer provides no legal authority that Student's complaint should be dismissed in its entirety if only some of the issues are insufficient. Therefore, only Issues One, Three, Four, Seven, Eight, Nine, and Ten are discussed in this order.

Student's first issue alleges Western Placer denied Student a free appropriate public education, referred to as FAPE, by failing to conduct an appropriate child find. Western Placer argues this is insufficient because the issue fails to state a specific time period. Although Student's issue does not specify a particular timeframe for the child find violation, Student does state facts relating to when he first enrolled in the district, August 2018, and when Western Placer first assessed him for special education in May 2019. Therefore, Student lists adequate facts about the problem to permit Western Placer to respond and participate in a resolution session and mediation.

Student's third issue alleges Western Placer retaliated against Student for complaining about a "fight club" mentality by extending his suspension for an additional nine days. Western Placer argues this claim is insufficient because it provides no

information about how the alleged retaliation relates to a cause of action under special education laws or the provision of FAPE to Student. Student may file a complaint relating to the proposed change regarding the Student's identification, evaluation, or educational placement or providing the Student a FAPE. Here, Student does not provide any facts describing how the retaliation or extension of suspension denied him a FAPE. Student simply states the extension of the suspension was retaliatory for complaining. Issue Three is insufficient.

Student's fourth issue alleges Western Placer was negligent in supervising students which led to a brawl on campus that injured Student. Western Placer argues this claim is insufficient because it provides no information about how the alleged retaliation relates to a cause of action under special education laws or the provision of FAPE to Student and that negligent supervision is a tort claim. Here, similar to Issue Three, Student does not provide any facts describing how the negligent supervision denied him a FAPE. Issue Four is insufficient.

Student's Issue Seven alleges Western Placer failed to follow up on significant information in its May 30, 2019 multidisciplinary assessment and create a plan for his mental health issues. Western Placer argues this is insufficient because it does not allege a specific time period and there are no facts regarding what type of plan Student alleges Western Placer should have created. Student alleged Western Placer issued its multidisciplinary report on May 30, 2019 and failed to follow up on clinically significant and very elevated markers within the report and alleges the behavior goal fails to meet a minimum standard that would improve Student's behavior. Student provides enough facts regarding the assessment and subsequent individualized education program, referred to as an IEP, to permit Western Placer to respond and participate in a resolution session and mediation.

Student's Issue Eight alleges Western Placer violated special education norms by demanding Student's parents sign the IEP immediately following the meeting. Western Placer argues this is insufficient because it does not allege a violation of special education laws. Student does not allege a violation of special education laws and instead states Western Placer should have allowed Parents time to review the document. Student's statement of the issue is not specific enough for Western Placer to understand if Student is alleging a denial of parental participation, a procedural violation that could be a denial of FAPE, or something that does not fall within OAH's jurisdiction. Issue Eight is insufficient.

Student's Issue Nine alleges Western Placer demanded Student's parents sign an unenforceable stipulated settlement agreement. Western Placer argues this is insufficient because it does not allege a violation of special education laws. Student does not allege a violation of special education laws and instead states Western Placer required Parents to sign an agreement regarding Student's expulsion. Student does not provide any facts regarding how the stipulated expulsion relate to the identification, evaluation, or educational placement or providing Student a free appropriate public education. Student's Issue Nine is insufficient.

Student's Issue Ten alleges Western Placer failed to implement his IEP and then violated his rights under California Welfare and Institutions Code §625.6. Western Placer argues the allegation regarding California Welfare and Institutions Code §625.6 is insufficient because Student provides no facts explaining how an alleged violation of California Welfare and Institutions Code §625.6 relates to FAPE. Student does not provide any facts or argument regarding how the alleged violation of California Welfare and Institutions Code §625.6 at all relates to a denial of FAPE. Therefore, the portion of

Student's Issue Ten regarding California Welfare and Institutions Code §625.6 is insufficient.

Student's proposed resolutions request training for Western Placer, compensatory education, fund tuition at a private school, amend the IEP to include more rigorous goals, an independent review of the manifestation determination review meeting, and independent educational evaluations among other remedies. 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).) Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

ORDER

1. Issues One, Two, Five, Six, Seven, and part of Ten of Student's complaint are sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).
2. Issues Three, Four, Eight, Nine, and part of Ten 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).
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 the expedited and non-expedited due process hearing.

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues One, Two, Five, Six, Seven, and Issue Ten, without the allegation of California Welfare and Institutions Code §625.6, in Student's complaint.

IT IS SO ORDERED.

DocuSigned by:
Linda Johnson
5092A92341544B9...

DATED: October 8, 2019

Linda Johnson
Administrative Law Judge
Office of Administrative Hearings