BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018090519 ORDER DETERMINING COMPLAINT SUFFICIENT

On September 14, 2018, Student filed a request for due process hearing (complaint) naming West Contra Costa Unified School District. Issue Two of the complaint alleged West Contra Costa denied Student a free appropriate public education by failing to provide a stay put placement or offer a placement comparable to the last implemented individualized education program. Student's remedies included a request for an order from OAH requiring West Contra Costa to place Student in a program comparable to his last implemented EP pending resolution of this matter. Student has not filed a motion for stay put.

On September 19, 2018, West Contra Costa filed "Respondent's Opposition to Student's Motion for Stay Put; in the Alternative Respondent's Notice of Insufficiency." West Contra Costa "interprets" the allegations in Issue Two as a motion for stay put and argues Student failed to provide sufficient information to establish Student's last agreed upon and implemented IEP and Student failed to establish what constitutes his stay put placement. As to the Notice of Insufficiency, West Contra Costa argues that Issue Two is insufficient for the same reasons. For the reasons set forth below, OAH finds Student's Issue Two sufficient and does not interpret Student's Issue Two as a motion for stay put.[1]

APPLICABLE LAW

Stay Put

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006)[2]; Ed. Code, § 56505 subd. (d).) This is referred to as "stay put." For purposes of stay put, the current educational

[1] This Order does not preclude Student from filing a separate motion for stay put.

[2] All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

placement is typically the placement called for in the student's individualized education program, which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

Courts have recognized, however, that because of changing circumstances, the status quo cannot always be replicated exactly for purposes of stay put. (*Ms. S. ex rel. G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).) Progression to the next grade maintains the status quo for purposes of stay put. (*Van Scoy ex rel. Van Scoy v. San Luis Coastal Unified School Dist.* (C.D. Cal. 2005) 353 F.Supp.2d 1083, 1086 ["stay put" placement was advancement to next grade]; see also *Beth B. v. Van Clay* (N.D. Ill. 2000) 126 F.Supp.2d 532, 534; Fed.Reg., Vol. 64, No. 48, p. 12616, Comment on § 300.514 [discussing grade advancement for a child with a disability.].)

Sufficiency of the Complaint

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 AND ORDER

The complaint alleges Student is 18 years old and had been attending ANOVA, a non-public school primarily designed for students with autism through the 2018 extended school year. He did not obtain a high school diploma.

The complaint further alleges that Student's triennial IEP team meeting was held on April 10, 2018, and May 7, 2018. On May 7, 2018, West Contra Costa proposed a West Contra Costa transition program for placement. Parents disagreed with the proposed placement and requested West Contra Costa consider other placements such as Meristem, a private vocational and transition residential program in Sacramento. On August 16, 2018, Student's counsel sent an email to West Contra Costa requesting that Student remain in his last agreed upon placement at ANOVA. Parents later learned that Student could not stay at ANOVA after the conclusion of the 2018 extended school year and requested a comparable placement from West Contra Costa. On August 23, 2018, another IEP team meeting was held to discuss placement and West Contra Costa provided more details about the West Contra Costa transition program. Parent did not consent to either the May 7, 2018, or the August 23, 2018, IEPs offering the West Contra Costa transition program.

A motion for stay put requires evidence of the stay put placement. Student did not file a motion for stay put and was not required to offer evidence to support the allegations in the complaint. The facts alleged in support of Issue Two, and the remedies requested, are adequate to permit West Contra Costa to respond to the complaint, to participate in a resolution session and mediation, and to prepare for hearing.

ORDER

1. Issue Two of Student's complaint is sufficient under section title 20 United States Code 1415(b)(7)(A)(ii).

2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

DATE: September 25, 2018

DocuSigned by:
Marian H. Tully
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MARIAN H. TULLY
Presiding Administrative Law Judge
Office of Administrative Hearings