BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

CANYON VIEW SCHOOL.

OAH CASE NUMBER 2021020866

ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

MARCH 12, 2021

On February 24, 2021, 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 Canyon View School. On March 11, 2021, Canyon View School filed a Notice of Insufficiency as to the complaint and request to consolidate cases.

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).

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 five issues. The issues are discussed below.

Issue One alleges that Student attended Canyon View, a nonpublic school, between January 7, 2019 and November 19, 2019. The complaint alleges that during his time at Canyon View, Student engaged in maladaptive behaviors including physical aggression towards staff and peers, regularly leaving his classroom without permission, and engaging in off-campus elopement. Issue One asserts that Canyon View failed to provide Student a free appropriate public education, FAPE by failing to assess Student in the areas of functional behavior and educationally related mental health services. Issue One is sufficiently pled to inform Canyon View of the nature of the claim.

Issue Two alleges that Student's behaviors significantly deteriorated during the time he attended Canyon View, including frequent elopements lasting between 2 to 5 hours at a time. The complaint alleges Canyon View denied Student a FAPE by failing to provide behavioral support services to Student to address his maladaptive behaviors. Issue Two is sufficiently pled to put Canyon View on notice of the nature of the dispute.

Issue Three alleges that Student demonstrated emotional dysregulation, inability to resolve peer conflicts and lack of focus which impacted his ability to access his education and denied Student a FAPE. The complaint alleges Canyon View should have referred Student for an educationally related mental health services assessment. Issue Three is sufficiently pled to inform Canyon View of the nature of the claim.

Issue Four alleges that Canyon View used unlawful restraints against Student in violation of Education Code Section 56521.1. The complaint asserts Canyon View denied Student a FAPE by employing unlawful physical restraints rather than using

positive behavior interventions and supports. Issue Four is sufficiently pled to inform Canyon View of the nature of the claim.

Issue Five alleges Canyon View violated Student's Rights Under Title II of the Americans with Disability Act, Section 504 of the Rehabilitation Act of 1973 and the Unruh Civil Rights Act. 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, a motion to dismiss is the proper motion to address claim over which OAH lacks jurisdiction.

Canyon View's notice of insufficiency includes a request to consolidate this matter with a separately filed matter pending with OAH involving Student and another school district. A request to consolidate cannot be combined with a notice of

insufficiency. Therefore, OAH will not rule on Canyon View's request to consolidate. In the event Canyon View wishes OAH to consider a request to consolidate matters, it may file a separate motion to consolidate and serve all necessary parties.

ORDER

1. The complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. All presently scheduled dates in this matter are confirmed.

IT IS SO ORDERED.

Jennifer Kelly

Jennifer Kelly
Administrative Law Judge
Office of Administrative Hearings