BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2019010646
v.	ORDER DETERMINING DUE PROCESS COMPLAINT'S SUFFICIENCY
GARVEY SCHOOL DISTRICT.	

On January 16, 2019, Student filed a due process hearing request[1] (complaint) with the Office of Administrative Hearings naming Garvey School District. On January 28, 2019, Garvey 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).

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,

[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).

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 46540-46541, 46699.)

DISCUSSION

The facts alleged in Student's complaint are sufficient to put Garvey on notice of the issues forming the basis of the complaint. Student identifies two issues in the complaint. The first issue is a claim that Garvey predetermined its offer of services to Student at an individualized education program team meeting on December 17, 2018, thus denying Parent meaningful participation in the IEP development process. The complaint contains facts that support this issue.

The second issue in Student's complaint is a claim that Garvey retaliated against Parent by sending a Garvey administrator, accompanied by a police officer, to Student's home on November 28, 2018, to discuss Student's attendance issues. Student claims this alleged retaliation violated "[b]oth the ADA [Americans with Disabilities Act] and Section 504 [§ 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794; see 34 C.F.R. § 104.1 et. seq. (2000)]. It is this issue that Garvey claims is insufficiently plead.

Student's complaint is neither vague nor confusing. Student has provided information to Garvey which provides it with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation. Both claims are sufficiently plead. Although Garvey correctly states in its notice of insufficiency that OAH does not have jurisdiction over ADA and Section 504 claims, this is not a ground for finding the complaint insufficiently plead. There may be other vehicles Garvey can use to address this issue, and nothing in this order precludes Garvey from doing this.

ORDER

1. Student's complaint is deemed sufficient under title 20 United States Code section 1415(c)(2)(C) and Education Code section 56502, subdivision (d)(1).

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

DATE: February 1, 2019

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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings