BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

PLACENTIA-YORBA LINDA UNIFIED SCHOOL DISTRICT AND BROOKHAVEN ELEMENTARY SCHOOL.

OAH CASE NUMBER 2020020536

ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

MARCH 2, 2020

On February 11, 2020, 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 Placentia-Yorba Linda Unified School District and Brookhaven Elementary School. Placentia-Yorba Linda and Brookhaven Elementary received the complaint on February 12, 2020. On February 27, 2020, Placentia-Yorba Linda Unified and Brookhaven Elementary filed a timely 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).

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, referred to as a FAPE; (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 four claims, two of which are sufficient and two which are insufficient. The issues are discussed below.

Issues 1 and 4 allege violations on the part of Brookhaven Elementary only, not Placentia-Yorba Linda Unified. These issues are sufficiently pled to put Brookhaven Elementary on notice as to the basis of Student's claims. Issue 1 of the complaint alleges a violation on the part of Brookhaven Elementary for offering 775 minutes of specialized academic instruction to be provided outside of the general education setting. Issue 4 of the complaint alleges a violation by Brookhaven Elementary for allegedly failing to provide adapted physical education for 30 minutes, two times each week as called for in September 12, 2019 individualized education program, referred to as an IEP. In construing the complaint liberally, the facts alleged in Student's complaint as it relates to Issues 1 and 4 are sufficient. The complaint provides enough information to provide Brookhaven Elementary with an awareness and understanding as to what Student is alleging, which is a failure to offer specialized academic instruction in the general education classroom and to provide the weekly adapted physical education as set forth in the September 12, 2019 IEP. Accordingly, Issues 1 and 4 are sufficient.

However, Issues 2 and 3 are insufficiently pled. Issue 2 of the complaint is unclear as to what "Annual IEP term" refers to. In addition, Issue 2 fails to allege sufficient facts as to how Brookhaven Elementary's alleged changing of IEP dates denied Student an educational benefit, educational opportunities, or impeded Parent from meaningfully

participating in the decision-making process regarding the provision of a FAPE to Student.

Similarly, Issue 3 of the complaint fails to allege sufficient facts as to how Placentia-Yorba Linda Unified's and Brookhaven Elementary's alleged refusal to make clerical corrections to Student's educational records, documents, or IEPs since September 19, 2019, denied Student an educational benefit, educational opportunities, or impeded Parent from meaningfully participating in the decision-making process regarding the provision of a FAPE to Student. Issues 2 and 3 of complaint fails to describe sufficient facts to provide Placentia-Yorba Linda Unified and Brookhaven Elementary with an awareness and understanding as to how these claims denied Student a FAPE. Accordingly, Issues 2 and 3 are insufficient.

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. Issues 1 and 4 of Student's complaint are sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).
2. Issues 2 and 3 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 a due process hearing.
5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues 1 and 4 of Student's complaint and against Brookhaven Elementary only. Placentia-Yorba Linda Unified will be dismissed as a party.

IT IS SO ORDERED.

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Rommel P. Cruz
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Rommel P. Cruz

Administrative Law Judge

Office of Administrative Hearings