BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. SAN GABRIEL UNIFIED SCHOOL DISTRICT AND GARVEY SCHOOL DISTRICT.	OAH Case No. 2019020963 ORDER DETERMINING COMPLAINT SUFFICIENT

On February 25, 2019, Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming San Gabriel Unified School District and Garvey School District. On March 12, 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.)

[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).

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

The facts alleged in Student's complaint are sufficient to put Garvey on notice of the issues forming the basis of the complaint. Student's complaint is 49 pages with 32 pages of facts related to the issues. Student's complaint names both Garvey and San Gabriel, however, only Garvey filed a notice of insufficiency. Student alleges seven issues related to Garvey. Garvey's notice of insufficiency asks OAH to dismiss Student's complaint in its entirety, however, only alleges three areas of Student's complaint to be insufficient.

Garvey alleges that Student's claim related to readiness skills is confusing and it cannot determine if Student's claim relates to learning or the curriculum for mathematics. For this contention Garvey only points to one area listed under Student's broad goal that Garvey denied him a FAPE from November 2017 to the present for failing to offer, implement, and or provide a placement and program that would appropriately meet his needs. Student lists the issues, the time period, and three pages of facts related to the issue in addition to the 32 pages of facts previously plead. Student lists adequate related facts to permit Garvey to respond to the complaint and participate in a resolution session and mediation.

Garvey alleges Student's issue pertaining to the psychoeducational evaluation is insufficient because Student does not list what specific inconsistencies are listed in the report. Student alleges the specific report at issue and that the teacher's response on the social emotional behavior rating scales was inconsistent with Student's educational history and the teacher's previous report. Simply because Student does not state what the inconsistencies are within the issues does not make Student's complaint insufficient. Student lists many additional facts related to the psychoeducation evaluation in the 32 pages of facts plead prior to the list of issues. Student lists adequate related facts to permit Garvey to respond to the complaint and participate in a resolution session and mediation.

Similarly, Garvey alleges Student's issue related to the functional behavioral analysis is insufficient because Student does not list what maladaptive behavior was not identified and assessed. However, Student does allege in the fact section that the assessor failed to assess, identify, and analyze Student's inattention, off-task behaviors, and lack of independence in completing tasks. Student lists adequate related facts to permit Garvey to respond to the complaint and participate in a resolution session and mediation.

Student's proposed resolutions request nine additions to Student's IEP, five specific independent educational evaluations, and a specific amount of compensatory services. 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).) The proposed resolution stated in Student's complaint are well-defined.

ORDER

1. The complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).

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

DATE: March 13, 2019

DocuSigned by:
Linda Johnson
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LINDA JOHNSON
Administrative Law Judge
Office of Administrative Hearings