BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

FRESHWATER ELEMENTARY SCHOOL DISTRICT.

OAH CASE NUMBER 2019090479

ORDER GRANTING NOTICE OF INSUFFICIENCY OF SECOND AMENDED COMPLAINT AND GRANTING LEAVE TO AMEND AS TO ISSUES TWO, THREE AND FOUR

On September 13, 2019, Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Freshwater Elementary School District, the California Commission on Teacher Credentialing, the California Department of Education and several individuals who serve as superintendent and trustees for Freshwater Elementary School District. On September 23, 2019, OAH issued orders dismissing the individually named defendants because they do not qualify as public agencies over which OAH has jurisdiction in a complaint alleging violations of the Individuals with Disabilities in Education Act or California Special Education Laws. On September 23, 2019, OAH issued a further order dismissing the California Department of Education because it is not the local education agency responsible for providing special education or related services to Student. On

November 7, 2019, OAH dismissed the California Commission on Teacher Credentialing on similar grounds.

On September 26, 2019, Freshwater filed a Notice of Insufficiency as to the complaint. On September 30, 2019, OAH issued an order finding the initial complaint was insufficiently pled under title 20 United States Code section 1415 (c)(2)(D).

On October 21, 2019, Student filed an Amendment to OAH Complaint. On October 24, 2019, Freshwater filed a Notice of Insufficiency. On October 28, 2019, OAH issued an order finding Issue One of Student's complaint sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii), and finding Issues Two and Three insufficiently pled under title 20 U.S.C. section 1415(c)(2)(D). Student was granted leave to file an amended complaint under title 20 U.S.C. section 1415(c)(2)(E)(i)(II).

On November 4, 2019, Student filed a Second Amended Complaint. On November 19, 2019, Freshwater filed a Notice of Insufficiency as to Student's Second Amended 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; (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

The Second Amended Complaint omits Issue One pled in Student's amended pleading dated October 21, 2019, even though OAH's order dated October 28, 2019, found that Issue One is sufficiently pled. OAH assumes issue one was inadvertently omitted from Student's Second Amended Complaint.

Issue Two in Student's Second Amended Complaint alleges Freshwater failed to communicate with Student's parents about an alleged incident of abuse. The amended complaint does not state how the purported miscommunications between Freshwater and parents denied Student a free appropriate public education, referred to as FAPE, as required by OAH's October 28, 2019 order.

Issue Three reiterates Student's disagreement with the resolution of Student's complaint filed with the Department of Education. Student fails to allege how the resolution of Student's complaint with the California Department of Education relates to Student's educational program, or Student' needs, accommodations or services, as required by OAH's October 28, 2019 order.

Student adds a new Issue Four to the Second Amended Complaint. Student alleges Freshwater failed to report alleged abuse of Student to law enforcement. These facts do not raise a new issue for resolution, but instead relate to Issue One in the amended complaint dated October 11, 2019, which OAH previously found to be sufficient.

Student's Second Amended Complaint is insufficient as to Issues Two, Three and Four. Student does not state facts describing how Freshwater's failure to communicate with parents denied Student a FAPE, as required by OAH's October 28, 2019 order. Therefore, Issue Two remains insufficiently pled. Student further fails to explain how the resolution of its complaint with the California Department of Education relates to Student's educational program, or Student's needs, accommodations or services as stated in OAH's October 28, 2019 order. Therefore, Issue Three remains insufficiently pled.

Student's newly pled Issue Four does not raise a separate issue for resolution. Student alleges facts about how Freshwater responded to the alleged incident of abuse and whether it was required to report the incident to law enforcement. These additional facts relate to Issue One raised in Student's complaint dated October 11, 2019. Therefore, the newly plead Issue Four does not create a separate issue for resolution by OAH.

MEDIATOR

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. Issue One of Student's complaint dated October 11, 2019, is sufficiently pled under title 20 United States Code section 1415(b)(7)(A)(ii).
2. Issues Two, Three and Four in Student's Second Amended Complaint dated November 4, 2019 are insufficiently pled under title 20 United States Code section 1415(b)(7)(A)(ii).
3. Student shall be permitted to file a third amended complaint that states or restates all facts in a single document. 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 the amended complaint will restart the applicable timelines for a due process hearing.

4. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issue One in Student's complaint dated October 11, 2019.
5. If Student files a Third Amended Complaint, Student shall include all issues for hearing in that document, including Issue 1 from the October 11, 2019 Amended Complaint.

IT IS SO ORDERED.

DATED: November 20, 2019

DocuSigned by:
Jennifer Kelly
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Jennifer Kelly
Administrative Law Judge
Office of Administrative Hearings