BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

CORONADO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021020645

ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

FEBRUARY 25, 2021

On February 16, 2021, Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Coronado Unified School District as respondent. On February 22, 2021, Coronado filed a 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; (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 three claims in the complaint, some of which are sufficient and some which are insufficient. The issues are discussed below.

ISSUE 1

Student's Issue 1 alleges that Coronado denied Student a FAPE by failing to timely locate, identify, or evaluate Student under its child find obligation, from September 3, 2020 to February 16, 2021. Coronado contends that Student's complaint fails to provide sufficient facts to identify what Coronado did or did not do that resulted in this alleged failure, or how this failure led to a denial of FAPE.

Student alleges a child find violation and includes the time period over which the alleged violation occurred. Further, Student alleges that the violation occurred because Coronado failed to timely locate, identify, and evaluate Student. Student's complaint provides enough information to give Coronado an awareness and understanding of the issues forming the basis of the complaint so that Coronado may prepare for resolution session, mediation, and hearing.

ISSUE 2

Student's Issue 2 alleges that Coronado denied Student a FAPE by failing to find Student eligible for special education and related services under the eligibility category of specific learning disability during a October 1, 2020 meeting held under what the undersigned interprets to be Section 504 of the Rehabilitation Act of 1973. Coronado contends that Student's complaint fails to provide sufficient facts to identify what Coronado did or did not do that resulted in this alleged failure, or how this failure led to

a denial of FAPE. Further, Coronado contends that OAH does not have jurisdiction to hear Section 504 claims.

Student specifies that the FAPE denial alleged here is Coronado's failure to find Student eligible for special education. Student further specifies that the eligibility category for which Coronado failed to find Student eligible is specific learning disability. Student's complaint provides enough information to give Coronado an awareness and understanding of the issues forming the basis of the complaint so that Coronado may prepare for resolution session, mediation, and hearing.

Issues 1 and 2 are sufficiently pled to put Coronado on notice as to the basis of Student's claims.

ISSUE 3

Student's Issue 3 alleges that Coronado denied Student a FAPE by failing to allow Parents meaningful participation in the decision-making process at the October 1, 2020 Section 504 meeting where Parent requested that Student return to an IEP. Coronado contends that Student's complaint fails to provide sufficient facts to identify what Coronado did or did not do that resulted in this alleged failure, or how this failure led to a denial of FAPE.

Student does not allege how a lack of participation in a Section 504 meeting relates to a denial of FAPE under the IDEA. This claim is 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 2 of Student's complaint are sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).
2. Issue 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 2 in Student's complaint.

IT IS SO ORDERED.

Claire Yazigi
Claire Yazigi (Feb 25, 2021 10:48 PST)

Claire Yazigi
Administrative Law Judge
Office of Administrative Hearings