BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. COALINGA-HURON UNIFIED SCHOOL DISTRICT.	OAH Case No. 2019030189 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On March 7, 2019, Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming (Coalinga-Huron Unified School District). On March 12, 2019, Coalinga-Huron filed a Notice of Insufficiency as to Student's complaint explicitly regarding both the "expedited and non-expedited issues."

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).

Title 20 United States Code section 1415(k)(3) permits a party to request an expedited hearing to appeal a decision regarding a disciplinary change of placement, such as placement in an alternative education setting or a manifestation determination regarding student conduct. This section requires an expedited hearing to occur within 20 school days of the date the hearing is requested. There is no provision similar to that in title 20 United States Code section 1415(c)(2)(A) for testing the sufficiency of a request for an expedited hearing pursuant to section 1415(k). Indeed, there is insufficient time to complete the NOI process in expedited hearings.

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

[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).

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, *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

Issue 2(b) is an expedited claim alleging Coalinga-Huron failed to convene a manifestation determination meeting in November 2018, and as such is not subject to a notice of insufficiency.

As to the non-expedited issues, Student's complaint is not well-organized and does not consistently describe events in chronological order. However, there is sufficient detail in the complaint to identify the following factual allegations, much of which Coalinga-Huron likely knows due to being involved in the alleged events.

Student was identified as eligible for special education and related services in 2015 based on specific learning disability due to auditory processing deficits. Student had social-emotional functioning and behavioral deficits since at least 2016; Coalinga-Huron was aware of these additional areas of unique need. Student attended Huron Middle School through the 2017-2018 school year, and then transitioned to Coalinga High School, which is one hour from his home. Coalinga-Huron held a transition individualized education program team meeting at the high school before he started attending ninth grade in the 2018-2019 school year. The resulting IEP offered Student placement in a blended program of special day class, resource specialist program, and general education, and related services of educationally related mental health counseling.

In November 2018, Student was assaulted at school and required medical attention at the hospital. Student's pre-existing social-emotional functioning and behavioral deficits were exacerbated by the experience and he developed depression and anxiety because of bullying, teasing, threats of assault, and the actual assault in November 2018. Parent requested Coalinga-Huron provide Student mental health services and on November 27, 2018, Parent requested Coalinga-Huron convene an IEP team meeting. Parent had a meeting with a Coalinga-Huron employee alternately identified as Superintendent Lori Villanueva and Administrator Villanueva. Ms. Villanueva promised to place Student at a non-public school or a private school, even outside California if that is where the right program is located.

Coalinga-Huron held an IEP team meeting at which Parent requested Coalinga-Huron change Student's placement as agreed upon by Ms. Villanueva, and to an independent study program while Coalinga-Huron located an appropriate non-public school or private school placement. There was a discussion of Student not attending school regularly.

On December 10, 2018, Coalinga-Huron sent Parent a Prior Written Notice regarding Parent's requested change of placement to independent study. Coalinga-Huron claimed to have, during the IEP team meeting by discussion with the IEP team members, conducted a functional behavior analysis to determine the reasons Student was not attending school regularly. Coalinga-Huron denied Parent's request to change Student's placement to independent study because except for the educationally related mental health services in Student's IEP, his blended program of special day class, resource specialist program, and general education could not be implemented in an independent study environment. Student alleges Coalinga-Huron denied Parent meaningful participation during the IEP team meeting held between November 27, 2018, and December 10, 2018; failed to conduct a proper functional behavior analysis; predetermined Student's placement; and failed to provide a legally sufficient prior written notice because the December 10, 2018 Prior Written Notice did not include a description of the other options Coalinga-Huron considered along with the reasons those options were rejected, and a description of the factors relevant to Coalinga-Huron's refusal to change Student's placement.

Student alleges that between January 2018 and August 2018, Student was suspended for a total of three days. He had other behavioral referrals and received detentions and Saturday school, which he did not attend. Parent requested a placement change due to Student's anxiety and depression resulting from threats and the actual assault he experienced. Student's complaint acknowledges that Coalinga-Huron regards the assault event in November 2018 as the result of a fight instigated by Student. Student contends his placement is not appropriate. Further, Student asserts Coalinga-Huron failed to implement Student's IEP, that Parent was denied participation in a process that would involve a review of all relevant information in Student's file, particularly information provided by Parent, and that Parent was denied participation in the determination of whether Coalinga-Huron's failure to implement Student's IEP gave rise to the behavior at issue in the November 2018 assault.

Student alleges Coalinga-Huron denied Student a FAPE after the incident in which Student was assaulted and went to the hospital in November 2018 by failing to provide Student "related and mental health services designed to address the emotional, psychological and physical trauma experienced by Student after the assault," conduct an adequate functional behavior assessment after the physical assault, and modify Student's behavior intervention plan after the physical assault.

Student alleges that since November 2017, Coalinga-Huron failed to offer Student appropriate academic and behavior goals and services, including an appropriate behavior intervention plan and appropriate mental health counseling, when his grade point average and discipline record showed he was not making satisfactory academic or behavioral progress. Coalinga-Huron blamed Student for gang involvement but failed to offer Student instruction and reinforcement of school expectations, violence prevention programs, anger management groups, counseling for mental health issues, life skills training, or social skills instruction to address what the school characterized as gang-affiliated problems relating to his behavior. Further, Student asserts Parent was denied meaningful participation in the development of Student's educational program because Coalinga-Huron disregard Parent's concern after she continually provided input that Student was not making progress, especially regarding behavior. Student alleges even if supplementary aids and related services were designed according to Student's needs at the time they were included in his IEPs since November 2017, they were not adequately implemented.

Finally, Student alleges Coalinga-Huron denied Student a FAPE by failing to provide a safe and appropriate learning environment free from bullying and failing to provide appropriate supports and services to address the bullying and Student's response to the bullying.

Student's proposed resolutions are an "alternative setting," meaning a permanent change of placement from Coalinga High School to a non-public or private school; training of Coalinga-Huron special education staff who act as IEP team administrative designees and special education case managers in the areas of "requirements and best practices for implementing disciplinary strategies (promising practices), changes of placement, including interim alternative educational placements and ensuring that manifestation determination meetings are conducted at the appropriate time, with the appropriate team members, and in an appropriate manner;" and unspecified compensatory education.

The facts alleged in Student's complaint are sufficient to put Coalinga-Huron on notice of the issues forming the basis of the complaint. Student's complaint identifies the issues and adequate related facts about the problem to permit Coalinga-Huron to respond to the complaint and participate in a resolution session and mediation.

Therefore, Student's statement of the claims identified above is sufficient.

ORDER

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

2. The expedited matter shall proceed on the following dates: mediation on March 21, 2019; telephonic prehearing conference on March 29, 2019; and due process hearing on April 2, 3, and 4, 2019.

3. The unexpedited matter shall proceed on the following dates: telephonic prehearing conference on April 19, 2019, and due process hearing on April 30, 2019, and May 1 and 2, 2019.

DATE: March 14, 2019

DocuSigned by:
Kara Hatfield
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KARA HATFIELD
Administrative Law Judge
Office of Administrative Hearings