BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

ANAHEIM ELEMENTARY SCHOOL DISTRICT.

OAH CASE NUMBER 2020090349

ORDER DENYING MOTION TO AMEND COMPLAINT AND ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

SEPTEMBER 24, 2020

On September 10, 2020, Parents on behalf of Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Anaheim Elementary School District. On September 18, 2020, Student filed what is identified as an "Amended Complaints". No motion to amend the complaint accompanied the Amended Complaints. On September 22, 2020, Anaheim Elementary filed a Notice of Insufficiency as to the complaint. Student filed an objection on September 23, 2020.

MOTION TO AMEND COMPLAINT

An amended complaint may be filed when either (a) the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or (b) the hearing officer grants permission, provided the hearing officer may grant such permission at any time more than five (5) days prior to the due process hearing. (20 U.S.C. §1415(c)(2)(E)(i).) The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).)

Student failed to file a motion to amend his complaint. The Amended Complaints filed on September 18, 2020, neither request to amend the complaint nor provides a basis for amending the complaint. Accordingly, to the extent Student moves to amend his complaint, the motion to amend is denied.

SUFFICIENCY OF 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 filed on September 10, 2020, alleges three claims, two of which are sufficient and one of which is insufficient. The complaint identifies the

problems as Complaints One, Two, and Three, which will be referred to as Issues One, Two, and Three respectively. The issues are discussed below.

Issues One and Three describes Parents' consent to assess Student for special education, with consent given on January 24, 2020. Student contends that Anaheim Elementary failed to timely complete its assessments. Specifically, Issue Three alleges Anaheim Elementary failed to complete an assessment of Student's speech. In addition, Issue One claims Anaheim Elementary ignored medical documentation provided by Parents to be considered in the assessments. In liberally construing the complaint, Issues One and Three provide a sufficient description of the problem to provide Anaheim Elementary with an awareness and understanding as to the basis of Student's contentions. Accordingly, Issues One and Three are sufficient.

However, Issue Two is insufficient. Issue Two discusses Student's home hospital instruction and the alleged failure by Anaheim Elementary to provide Student with necessary school materials and equipment. However, Issue Two fails to describe how these problems involve the identification, evaluation, or educational placement of Student, or the provision of a free appropriate public education to him. It is unclear in the complaint whether Student has an individualized education program, and if so, how Anaheim Elementary failed to implement the program. Accordingly, Issue Two is insufficiently pled.

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. Student's motion to amend his complaint is denied.
2. Issues One and Three of Student's complaint are sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).
3. Issue Two of Student's complaint is insufficiently pled under title 20 United States Code section 1415(c)(2)(D).
4. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II), containing all the claims Student seeks to raise at the due process hearing.
5. 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.
6. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues One and Three in Student's complaint.

IT IS SO ORDERED.

DocuSigned by:
Rommel P. Cruz
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Rommel P. Cruz

Administrative Law Judge

Office of Administrative Hearings