BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

FRESHWATER ELEMENTARY SCHOOL DISTRICT AND CALIFORNIA COMMISION ON TEACHER CREDENTIALING

OAH CASE NUMBER 2019090479

ORDER OF DETERMINATION OF SUFFICIENCY OF COMPLAINT

On September 13, 2019, Parent on behalf of 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 and the California Commission on Teacher Credentialing. On September 26, 2019, Freshwater 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

Freshwater's Notice of Insufficiency claims that Student's complaint fails to include a clear statement of facts related to the identification, evaluation, placement, or provision of a free appropriate public education, hereafter called FAPE, to the Student. Additionally, Freshwater contends that OAH lacks jurisdiction to hear Student's

allegations regarding First Amendment rights, Brown Act violations, mandated reporting, and tortious defamation. For these reasons, Freshwater alleges that Student's complaint is insufficient.

Student's complaint alleges three insufficiently pled claims because it fails to provide Freshwater with the required description as to how the allegations relate to the IDEA or a denial of FAPE.

With respect to Issue number one, Student alleges that a school staff member injured Student on two separate occasions including placing a hand on Student's chest and bruising his arms. There is no information as to how these alleged incidents relate to a denial of a FAPE or the impact on Student's education. Further, there is no information as to how these relate to a particular individualized education program meeting, hereafter called IEP, Student's disabilities, accommodations, or services. It is also unclear if this issue is within OAH's jurisdiction without further description. Thus, issue one is insufficiently pled.

The second issue describes allegations related to violations of parents' right to participate in Student's education and resolving disputes. It describes Parents' attempts to contact the school, staff, and school board regarding the allegations described in issue number one. However, there is no connection of the facts to the IDEA or a denial of FAPE. It does not discuss a particular IEP team meeting, or how this impacted Student's education. Without further information, it is also unclear if this issue is within OAH's jurisdiction. Thus, issue number two is insufficient.

Finally, Student discusses disagreement with a ruling by the California Department of Education regarding the above allegations, and harassment from Freshwater staff and a third party. Student, however, fails to give any facts as to how

these allegations relate to the IDEA and a denial of FAPE. Without these facts, it is unclear if OAH has jurisdiction to hear these allegations, and that any alleged conduct on the part of Freshwater employees relates to a denial of FAPE. Thus, issue three, is insufficiently pled.

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 resolutions have met the statutorily required standard, however, as stated, appear to be outside of OAH's jurisdiction.

JURISDICTION

A notice to dismiss for lack of jurisdiction is a separate motion from Freshwater's notice of insufficiency. If Freshwater wishes to file a motion to dismiss, it must do so in a separate filing. Thus, this Order does not determine if issues should be dismissed, or if OAH has jurisdiction.

MEDIATOR ASSISTANCE

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 complaint is insufficiently pled under section title 20 United States Code 1415(c)(2)(D).
2. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).

3. 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.
4. If Student fails to file a timely amended complaint, the complaint will be dismissed.
5. All dates previously set in this matter are vacated.

IT IS SO ORDERED.

DocuSigned by:
Cynthia Fritz
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DATED: September 30, 2019

Cynthia Fritz
Administrative Law Judge
Office of Administrative Hearings