BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

PALMDALE SCHOOL DISTRICT.

OAH CASE NUMBER 2019110018

ORDER DETERMINING DUE PROCESS COMPLAINT INSUFFICIENT

On October 31, 2019, Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Palmdale School District. On November 12, 2019, Palmdale filed a motion to dismiss and notice of insufficiency as to the complaint. OAH considers the motion a notice of insufficiency only as Palmdale needs to file any Motion to Dismiss separately from a Notice of Insufficiency to have its Motion to Dismissed ruled upon.

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, referred to as FAPE; (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 insufficiently pled claims. Student's first claim alleges that five years ago Palmdale and Student's advocate coerced Student's Parent

into sending Student to school without an aide. However, Student also alleges this only happened for two days. Student does not allege what individualized education program, referred to as an IEP, is at issue. Student does not provide any facts regarding the aide, such as the IEP included aide support but was not provided or Student required an aide but the IEP team disagreed. Student also does not offer any facts regarding the time period, if the aide issue was an ongoing problem or if it was limited to the two days at the beginning of the school year five years ago. Student does not provide enough facts for Palmdale to understand what the problem is or what time period Student is alleging. Therefore, the claim is insufficient.

Student's second claim alleges Student was approved for physical therapy services for three years but did not receive the services. Student does not list any facts related to what time period is at issue. Student does not provide the date of the IEP that authorized the services. Student does not provide enough facts for Palmdale to understand what the problem is or what time period Student is alleging. Therefore, the claim is insufficient.

Student's third claim alleges a pervious teacher did not want Student in her class. Student does not allege any facts relating to the time period in question or how it amounted to a denial of FAPE. Student alleges the teacher placed her in the back of the class and alleges an aide reported abuse, but Student fails to allege any specificity to allow Palmdale to understand the facts, what the alleged denial of FAPE is, or time period at issue. Therefore, the claim is insufficient.

Student's proposed resolutions request an aide that Parent provides, an investigation of Palmdale's special education department, and an investigation of a local legal advocate. 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 stated in Student's complaint are not well-defined.

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:
Linda Johnson
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DATED: November 13, 2019

Linda Johnson
Administrative Law Judge
Office of Administrative Hearings