BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

MOUNTAIN VIEW-WHISMAN SCHOOL DISTRICT.

OAH CASE NUMBER 2020050734

ORDER DETERMINING STUDENT'S COMPLAINT TO BE INSUFFICIENT

JUNE 5, 2020

On May 22, 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 Mountain View-Whisman School District. On June 5, 2020, Mountain View-Whisman filed a notice of insufficiency as to the complaint. On June 5, 2020, Student filed a response.

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 problems. First, that Mountain View-Whisman did not allow Parents to present data about their son and made an inappropriate placement offer in terms of class size and population. Second, that Parents do not trust Mountain View-Whisman to protect Student from bulling. And third, that Mountain View-Whisman does not understand and does not have the capability of teaching social skills to Student. As remedies, Parents want an opportunity to present more information to Mountain View-Whisman about their son, and for Mountain View-Whisman to adopt the recommendations of Student's experts.

Student's claims are insufficiently pled, particularly as they do not identify a particular date, event or document at issue. The complaint fails to provide Mountain View-Whisman with the required problem description and the facts relating to the problem. If Student is challenging a particular individualized education program, or IEP, team meeting, or series of meetings, he is required to identify the date or dates of those meetings. If Student is challenging the appropriateness of an offer of a free appropriate public education in an IEP, he should specify the date of the IEP and facts supporting a claim that the offer is not appropriate. Student appears to be challenging the appropriateness of a placement offer, perhaps the level or lack of social skills support, and Parents' opportunity to present information, but without reference to a specific IEP team meeting or meetings, the claims are vague and confusing.

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. Student seeks the opportunity to present data to the school district, but does not specify a

change sought to any FAPE offer. Student has not met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

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. The filing of an amended complaint will restart the applicable timelines for a due process hearing.
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:
Alexa Hohensee
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Alexa Hohensee

Administrative Law Judge

Office of Administrative Hearings