BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

CUPERTINO UNION SCHOOL DISTRICT AND SANTA CLARA COUNTY OFFICE OF EDUCATION.

OAH CASE NUMBER 2021040324

ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

APRIL 21, 2021

On April 8, 2021, Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Cupertino Union School District and Santa Clara County Office of Education as respondents. On April 19, 2021, Santa Clara 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).

Minimal pleading standards apply to requests for due process pursuant to the Individuals with Disabilities Education Act. (*Schaffer ex rel. Schaffer v. Weast,* (2005) 546 U.S. 49, 54 [126 S.Ct. 528, 163 L.Ed.2d 387.] 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.]; 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 One of Student's complaint asks whether Cupertino or Santa Clara denied Student a FAPE during the 2018-2019 school year by failing to implement the last agreed upon IEP dated September 25, 2018, failing to hold a revision IEP team meeting, committing procedural violations in IEPs dated April 8, 2019 and May 31, 2019, making decisions outside of the IEP process, failing to make appropriate offers in IEPs dated April 8, 2019 and May 31, 2019 to include specially designed instruction and related services, and failing to make a clear offer of FAPE in the May 31, 2019 IEP.

In its complaint, Student alleges that Santa Clara failed to ensure that Student had access to resources that would provide Student with a FAPE.

Additionally, Student alleges that Santa Clara did not conduct a timely or thorough functional hearing consultation. Student alleges the consultation should have included assessments., Whether Student's claims related to the January 9, 2019 consultation are outside of the statutory period is a question of fact and is not decided here.

The facts alleged in Student's Issue One are sufficient. Student's complaint identifies the issues and adequate facts about the problem to permit Santa Clara to respond and participate in a resolution session and mediation.

Issue Two of Student's complaint asks whether Cupertino or Santa Clara denied Student a FAPE during the 2019-20 school year by failing to: make an appropriate or clear offer of FAPE at the start of the school year, conduct an assessment within three years of Student's last triennial assessment of December 12, 2016, make an appropriate offer of FAPE in the May 19, 2020 IEP, and make a clear offer of FAPE in the May 19, 2020 IEP. Student's complaint includes no factual allegations asserting Santa Clara's responsibility for conducting assessments or providing special education or related services to Student during the 2019-2020 school year. Issue Two is not sufficient as to Santa Clara.

Issue Three asks whether Cupertino or Santa Clara denied Student a FAPE during the 2020-21 school year by failing to make an appropriate or clear offer of FAPE at the start of the school year and failing to timely hold an annual IEP team meeting in December 2020. Student's complaint includes nofactual allegations against Santa Clara pertaining to any failure to provide FAPE during the 2020-2021 school year. Issue Three is not sufficient as to Santa Clara.

ORDER

1. Issue One of Student's complaint is determined to be sufficiently pled under title 20 U.S.C. section 1415(b)(7)(A)(ii).
2. Issues Two and Three are determined to be insufficiently pled under title 20 United States Code section 1415(c)(2)(D). 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 hearing shall proceed as currently scheduled only on Issue One as to Santa Clara. The complaint shall proceed on all issues pled as to Cupertino.
5. Nothing in this order prevents the filing of a motion to dismiss claims.

IT IS SO ORDERED.

Claire Yazigi

Claire Yazigi
Administrative Law Judge
Office of Administrative Hearings