BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

CORONA-NORCO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2020020192

ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

FEBRUARY 11, 2020

On February 5, 2020, Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Corona-Norco Unified School District. On February 10, Corona-Norco 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

Student's complaint alleges three claims, some of which are sufficient and some which are insufficient. The issues are discussed below.

Issues One and Two are sufficiently pled to put Corona-Norco on notice as to the basis of Student's claims. Issue One alleges that Corona-Norco removed Student's personal one-to-one aide without notice and instead is using aides from other classes. Parent also alleges that she has information that no aide is in place for Student. As a resolution, Student proposes, "comply with written IEP from Chino Valley SD dated 02/19, Intensive Individual Services 1-1 aide".

Corona-Norco claims that Issue One is confusing and unclear as to a timeframe, and states a proposed resolution involving another school district. However, Student's Issue One is sufficiently pled to allow Corona-Norco to prepare for the resolution session, mediation, and hearing. Viewing Student's complaint as a whole, makes the timeframe to be the 2019-2020 school year. Any perceived inconsistencies or unclear information in Student's statement of facts, or proposed resolution, can be clarified at the resolution session.

Student's Issue Two alleges that Student's December 18, 20919 IEP notes state that if a one-to-one aide is not in place by December 20, 2019, Corona-Norco would consider Portview, a nonpublic school. Student requests as a proposed resolution that Corona-Norco comply with the December 20, 2019 IEP and move Student to Portview.

Corona-Norco claims that Issue two is insufficient and states only incomplete factual assertions requiring Corona-Norco to speculate as to Student's concern. However, viewing Issue Two and the corresponding proposed resolution together, Student's complaint alleges that Corona-Norco failed to implement the December 20,

2019 IEP by not considering Student's placement at Portsview, upon allegedly failing to have a one-to-one aide in place for Student. Issue Two is sufficiently pled to allow Corona-Norco to prepare for a resolution session, mediation and hearing. Any needed clarification as to Student's concern could be clarified at the resolution session.

Student's Issue Three states, "Its my right to have an advocate/representative and/or attorney to assist me with my IEP meetings."

Corona-Norco claims Issue Three is insufficiently pled as it does not state a claim appropriate for due process. Issue Three fails to state a claim regarding a proposed change regarding Student's identification, evaluation, or educational placement, or the provision of a free appropriate public education. Therefore, Student's Issue Three failed to state a claim or facts to establish a claim pursuant to the Individuals with Disabilities Education Act, and the claim is insufficient.

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. Issues One and Two of Student's complaint are sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).
2. Issue Three of Student's complaint is insufficiently pled under title 20 United States Code section 1415(c)(2)(D).
3. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).

4. 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.
5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues One and Two in Student's complaint.

IT IS SO ORDERED.

DocuSigned by:
Rita Defilippis
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Rita Defilippis

Administrative Law Judge

Office of Administrative Hearings