BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. WESTWOOD UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018060979 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On June 22, 2018, Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming Westwood Unified School District, which Westwood asserts it did not receive until June 25, 2018. On July 10, 2018, Westwood filed a Notice of Insufficiency as to Student's complaint.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint. (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).

The complaint is deemed sufficient unless a party notifies the Office of Administrative Hearings and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements. (20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).)

A complaint is sufficient if it contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem 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

[1] A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 U.S.C. section 1415(b)(7)(A).

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 was filed with OAH on June 22, 2018. Student included a proof of service declaring the complaint was electronically filed with OAH on June 22, 2018. Student also stated the complaint was personally served on two school district employees; however, Student did not include the date of that service. Westwood indicates in its NOI that it received Student's complaint on June 25, 2018. Westwood's NOI was dated, filed with OAH, and served on July 10, 2018, which is more than 15 days after the complaint was filed with OAH, but not more than 15 days after Westwood received Student's complaint. Therefore, Westwood's NOI is timely.

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

Issue One is sufficiently pled to put Westwood on notice as to the basis of Student's claims. Student alleges Westwood denied him FAPE when his general education teacher denied him access to the resource room to complete his assignments. Although Student does not list the time period and IEP specifically, he does identify who the teacher was and states the accommodation was listed in his IEP.

With regard to Issue Two and Three, Student fails to allege any facts as to how the claims relate to proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a denial of FAPE. Issue Two alleges Student did not receive the awards he was entitled to during his eighth grade graduation ceremony. Student does not allege that this was a denial of FAPE, but rather in retaliation because his Mother brought an advocate to the IEP team meeting. Issue Three alleges Westwood's superintendent has repeatedly called Student's Mother into meetings without

her husband or advocate present. Issue Three does not allege a denial of FAPE or even an issue regarding Student. Therefore, Student has failed to state sufficient facts supporting Issues Two and Three; they are insufficient.

Student's proposed resolutions request training for Student's teacher, discipline for Student's teacher, and that Westwood stop calling Student's Mother into meetings with the superintendent. 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. However, Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time. Although OAH could not order teacher discipline or require the superintended to cease requesting meetings, it could order training as a remedy.

A parent who is not represented by 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. Issue One of Student's complaint is sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).

2. Issues Two and Three of Student's complaint are 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).[2]

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.

[2] 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 Issue One in Student's complaint.

DATE: July 12, 2018

DocuSigned by:
Linda Johnson
5092A92341544B9...

LINDA JOHNSON
Administrative Law Judge
Office of Administrative Hearings