BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

V.

SANTA ANA UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2019080293

ORDER OF DETERMINATION OF INSUFFICIENCY OF DUE PROCESS COMPLAINT

On August 8, 2019, Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Santa Ana Unified School District. On August 23, 2019, Santa Ana Unified School District 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 insufficiently pled claims as it fails to provide Santa Ana Unified School District with the required problem description and the facts relating to the problem.

With respect to Issue One, Student alleges she does not agree with Santa Ana Unified School District's speech and language assessments conducted on December 12, 2016, December 19, 2016, December 21, 2016, January 25, 2017, and February 17, 2017, because she has seen no progress or growth. The assessment dates indicate Student's assessments occurred over two years before the filing of Student's complaint on August 8, 2019. Student has not provided any factual claims to indicate an exception to the two-year statute of limitations. (Ed. Code, § 56505(l).) Student's complaint contains no information to indicate what was wrong with the assessments. Student indicates she made no progress but did not provide any information to support this claim by indicating what goals, in which individualized education program, or how the assessment was responsible for the lack of progress. Student' Issue One is insufficient.

Student's Issue Two alleges Mother wants her signature erased from the January 31, 2019 individualized education program, because she has not seen any growth in Student during the year. OAH has no jurisdiction to remove a party's signature from an individualized education program. Rather, Student's Issue Two implies the January 31, 2019 individualized education program fails to provide Student a free appropriate public education. Student, however, has provided no factual claims to support this contention. Mother indicate she did not see growth in Student, but Issue Two fails to indicates what goals were offered, what goals were not met, or how the individualized education program failed to provide Student educational benefit. Student's Issue Two is insufficient.

Student's Issue Three alleges Mother is not able to communicate with Student's teachers over the telephone because they are busy. Student fails to provide any factual how this failure to communicate resulted in a denial of a free appropriate public education for Student. Student's Issue Three is insufficient.

MEDIATOR ASSISTANCE FOR NON-REPRESENTED PARENTS: 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.

DATED: August 26, 2019

DocuSigned by:
Judith Pasewark
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Judith Pasewark
Administrative Law Judge
Office of Administrative Hearings