BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

CAPISTRANO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2020011100

ORDER OF DETERMINATION OF INSUFFICIENCY OF DUE PROCESS COMPLAINT

FEBRUARY 18, 2020

On January 30, 2020, Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Capistrano Unified School District and YMCA of Orange County ASES Program. On February 3, 2020, OAH dismissed YMCA as a party. On February 14, 2020, Capistrano 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).

The complaint is deemed sufficient unless a party notifies OAH 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: (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

Capistrano timely filed its Notice of Insufficiency within 15 days of receiving Student's complaint. It claims that Student's complaint fails to allege any action or inaction by Capistrano that affected Student's education. Capistrano asserts that Student's complaint is insufficiently pled to place it on notice of any alleged legal violation as it pertains to Student and the identification, evaluation, placement, or provision of a free appropriate public education or FAPE.

Student's complaint alleges four issues. All four issues are insufficiently pled because they fail to provide Capistrano with the required description as to how the allegations relate to the Individuals with Disabilities Education Act or a denial of FAPE.

In Issue One, Student indicates that he was accepted into the YMCA ASES Program on September 20, 2019, pursuant to a settlement agreement, but has not yet entered the program. Student alleges Capistrano discriminated against him as a student with an individualized education program or IEP, with an intent to impede his entrance into the YMCA program. Issue One fails to include any supporting facts as to how attendance at the YMCA program is related to FAPE. Student does not allege any actions or inactions by Capistrano with regard to his identification, evaluation, educational placement, or the provision of FAPE. Accordingly, Issue One is insufficiently pled.

Issues Two, Three, and Four fail to allege any violation by Capistrano. Rather, these issues allege that YMCA staff discriminated against Student with an intent to

impede his entrance into the ASES Program. Student contends YMCA staff subjected him to a different enrollment process, failed to allow Mother to be part of the communication loop or to pick him up from the program, and required Student to have a full time aide, and then failed to provide an aide. There is no information as to how these alleged incidents relate to a denial of a FAPE by Capistrano, the only remaining party, or the impact on Student's education. Student fails to allege how these incidents relate to a particular IEP, or his disabilities, accommodations, or services. It is unclear if any of Student's issues are within OAH's jurisdiction without further description.

Student's complaint fails to include any information regarding his educational needs, his current IEP, Capistrano's responsibilities regarding the YMCA ASES program, and how his attendance at this program is related to the provision of FAPE. As such, the complaint fails to provide Capistrano with the required problem description and the facts relating to the problem.

Student's proposed resolutions requests entrance into the YMCA ASES Program, a communication plan between YMCA and home, provision of a fulltime aide or facilitator, and reimbursement for private daycare costs. 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).) Student has met the statutorily required standard of stating a resolution to the extent known and available to him.

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.

DocuSigned by:
Theresa Ravandi
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Theresa Ravandi

Administrative Law Judge

Office of Administrative Hearings