BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

SANGER UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NUMBER 2020020177

ORDER DETERMINING DUE PROCESS COMPLAINT SUFFICIENT

FEBRUARY 18, 2020

On February 4, 2020, Sanger Unified School District filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Student. On February 12, 2020, Student 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.)

Mootness describes the doctrine under which courts decline to hear a claim because it fails to present an existing controversy. (*Wilson v. Los Angeles County Civil Service Comm.* (1952) 112 Cal.App.2d 450, 453.)

OAH does not issue purely declaratory judgements when there is no issue in controversy. Special education due process hearings are limited to an examination of the time frame pleaded in the complaint and as established by the evidence at the hearing, and expressly do not include declaratory decisions about how the IDEA would apply hypothetically. (Gov. Code, § 11465.10-11465.60; Cal. Code Regs., tit. 5, § 3089; see also *Princeton University v. Schmid* (1982) 455 U.S. 100, 102 [102 S.Ct. 867, 70 L.Ed.2d 855] ["courts do not sit to decide hypothetical issues or to give advisory opinions"]; *Stonehouse Homes v. City of Sierra Madre* (2008) 167 Cal.App.4th 531, 539-542 [court deemed the matter not ripe for adjudication because it was asked to speculate on hypothetical situations and there was no showing of imminent and significant hardship].)

DISCUSSION

The description of the problem and the facts related to the problem articulated in Sanger's complaint are sufficient. Sanger's complaint identifies one issue and adequate facts about the problem to permit Student to respond and participate in mediation. Sanger's sole issue for hearing is whether its individualized education program, called an IEP, dated September 27, 2019, that was amended on October 18, and 28, 2019, provides Student a free appropriate public education, referred to as FAPE, was reasonably calculated to enable educational progress in light of Student's unique circumstances. Sanger held Student's annual IEP team meeting over there days, September 27, 2019, October 18, 2019, and October and 28, 2019. Parents consented to Sanger implementing the IEP, but disagreed that the goals were individualized, the

transition plan was adequate, the behavior plan was sufficient, the services offered were adequate for the goals, the goals were fully defined, and whether the IEP was complete. Sanger alleges a hearing is necessary because although Student's Parents consented to the implementation of the IEP they disagreed that it offered Student FAPE.

Student argues the issue is moot, the resolution requested amounts to an impermissible advisory opinion, and Parents are not on notice of how the conduct violated special education laws, and how the remedy related to a provision of FAPE. Student relies on the Decision in the consolidated matters of Student v. San Diego Unified School Dist. and San Diego Unified School Dist. v. Student (2018) OAH Case Nos. 2017081305 and 2017090642, the authority cited therein, and additional authority, to argue that Parents consented to implementation of the disputed IEP, including placement, therefore there is no existing controversy.

Student incorrectly summarizes the context of the dispute between San Diego Unified School District and the student's parents in the case relied upon. In that matter, although the parents initially only provided consent to implementation of the relevant IEP and expressly stated they did not concede the appropriateness of the IEP, they later "hand delivered a signed copy of the IEP's consent page to staff at [the relevant school] . . . . This version of Parents' consent was to the IEP offer, without the prior qualification that Parents[] were consenting only to implementation of the offer. During hearing, evidence overwhelmingly established that District received Parents' unequivocal, written consent to the June 7, 2017 IEP." For that reason, there was no controversy regarding whether the IEP offered the student a FAPE. The ALJ concluded San Diego Unified was entitled to implement the June 7, 2017 IEP, in its entirety, absent an order from OAH, if the student returned to public school, because of the parents' unqualified, unconditional consent to the IEP. Therefore, San Diego Unified's request for an order authorizing it to

implement the IEP if the student returned to public school was moot and the ALJ dismissed the school district's claim.

Unlike the parents in the case Student relies on, who gave unqualified consent to the IEP and therefore mooted the dispute with San Diego Unified, Parents provided a detailed list of disagreement on the consent page of the September 27, 2019 IEP that was amended on October 18, and 28, 2019.

Sanger's proposed resolution requests an order from OAH determining that the September 27, 2019 IEP that was amended on October 18, and 28, 2019, offers Student FAPE in the least restrictive environment. 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 resolution stated in Sanger's complaint is well-defined.

Here, a controversy exists as to whether or not the September 27, 2019 IEP that was amended on October 18, and 28, 2019, offers Student FAPE in the least restrictive environment. OAH has jurisdiction to entertain Sanger's claim and determine, as it requested, whether the September 27, 2019 IEP that was amended on October 18, and 28, 2019, offered Student a free appropriate public education.

ORDER

1. The complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

IT IS SO ORDERED.

DocuSigned by:
Linda Johnson
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Linda Johnson

Administrative Law Judge

Office of Administrative Hearings