BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SAN LORENZO VALLEY UNIFIED SCHOOL DISTRICT.	OAH Case No. 2019020193 ORDER DENYING REQUEST TO DETERMINE SUFFICIENCY OF EXPEDITED ISSUES AND GRANTING DETERMINATION OF INSUFFICIENCY OF REMANING CLAIMS

On February 5, 2019, Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming San Lorenzo Valley Unified School District. On February 11, 2019, San Lorenzo 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).

Title 20 United States Code section 1415(k)(3) permits a party to request an expedited hearing to appeal a decision regarding a disciplinary change of placement, such as placement in an alternative education setting or a manifestation determination regarding student conduct. This section requires an expedited hearing to occur within 20 school days of the date the hearing is requested. There is no provision similar to that in title 20 United States Code section 1415(c)(2)(A) for testing the sufficiency of a request for an expedited hearing pursuant to section 1415(k). Indeed, there is insufficient time to complete the NOI process in expedited hearings.

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

[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).

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 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 that San Lorenzo improperly disciplined Student for the behavior of writing a 'meme" which Student alleges is conduct related to his disability. The complaint requests the proposed remedies of San Lorenzo conducting a behavior assessment, developing a behavior intervention plan, and returning Student to his placement at San Lorenzo High School. As Student's complaint states an expedited issue, an expedited hearing is required pursuant to 20 U.S.C. section 1415(k). There is no provision similar to that in title 20 United States Code section 1415(c)(2)(A) for testing the sufficiency of a request for an expedited hearing and there is insufficient time to complete the NOI process. Accordingly, San Lorenzo's request to determine the sufficiency of Student's complaint is Denied as to the expedited issue as identified above that is raised in Student's complaint.

To the extent that Student's complaint seeks to raise any other claims, the complaint is insufficiently pled in that it is unclear as to the problems alleged, or the remedies proposed, to give San Lorenzo enough information to prepare for, or participate in, mediation and hearing. Accordingly, San Lorenzo's notice of insufficiency is Granted as to any claims not arising under 20 U.S.C. section 1415 (k).

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. San Lorenzo's request to determine the sufficiency of Student's expedited issue is Denied.

2. All expedited mediation, prehearing conference, and hearing dates in this matter are confirmed.

3. As to any other claims Student seeks to raise, Student's complaint is insufficiently pled under section title 20 United States Code 1415(c)(2)(D).

4. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).[2]

5. 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 hearing shall proceed only on expedited claims and any remaining claims will be dismissed.

5. All non-expedited dates previously set in this matter are vacated.

DATE: February 12, 2019

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Rita Defilippis
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RITA DEFILIPPIS
Administrative Law Judge
Office of Administrative Hearings

[2] The filing of an amended complaint will restart the applicable timelines for the non-expedited portion of the due process hearing.