BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

FRESHWATER ELEMENTARY SCHOOL AND CALIFORNIA COMMISSION ON TEACHER CREDENTIALING

OAH CASE NUMBER 2019090479

ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS AMENDED COMPLAINT

On September 13, 2019, Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as "OAH", naming Freshwater Elementary School District and the California Commission on Teacher Credentialing. On September 26, 2019, Freshwater filed a Notice of Insufficiency as to the complaint.

On September 30, 2019, an OAH Administrative Law Judge issued an order finding the initial complaint was insufficiently pled under section title 20 United States Code 1415(c)(2)(D). On October 11, 2019, Student filed a document entitled "Amendment to OAH Complaint". On October 24, 2019, Freshwater filed a notice of Insufficiency as to the amended 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

Freshwater's Notice of Insufficiency claims that Student's amended complaint fails to include a clear statement of facts related to the identification, evaluation, placement or provision of a free appropriate public education, often called "FAPE", to the Student. It also asserts the amended complaint alleges issues that are unrelated to the Individuals with Disabilities Education Act, commonly referred to as "IDEA" and fails to show a relationship to these issues and Student's individualized instruction or special education services. Freshwater asserts the amended complaint lacks a proposed remedy for the denial of a FAPE. Finally, Freshwater contends that the stated remedies are insufficient and should render the amended complaint insufficient and require dismissal.

Issue one in the Amendment to OAH Complaint recounts the incident described in Student's initial complaint regarding the aide making contact with her son's chest while they were at the pumpkin patch. Student asserts that these incidents are a denial of FAPE because the aide's behavior impacted his education negatively with Student becoming fearful of going to school and Student behaving in an unusual way and being upset in an exaggerated manner in response to stressful situations. A determination of sufficiency reviews the content of the allegations of the due process request to ensure the complaint provides the named party an awareness and understanding of the issues forming the basis of the complaint. Here, Student's due process request for issue one satisfies the liberal pleading standard to allow Freshwater to participate in a resolution session, mediation, and prepare for mediation.

As to the remaining issues, Student's amended complaint alleges two insufficiently pled claims because it fails to provide Freshwater with the required description as to how the allegations relate to IDEA or a denial of FAPE.

The second issue raised in Student's amended complaint is that the administration failed to discuss parent's concerns after the formal written request was sent on October 9, 2017. Student states that the administration officials refused to speak with parent on October 11, 2017 when parent attempted to discuss the initial written request. There are no facts provided on how this failure to meet with parents related to a denial of FAPE or the impact on Student's education. Therefore, issue two is insufficiently pled.

Lastly, Student's issue three reiterates the issue related to a complaint made to California Department of Education (CDE). Student takes issue with CDE's resolution of Student's complaint. This allegation does not allege a relationship to Student's educational program, Student's needs, accommodations or services. Thus, issue three is insufficiently pled.

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 have met the statutorily required standard.

JURISDICTION

A notice to dismiss for lack of jurisdiction is a separate motion from Freshwater's notice of insufficiency. If Freshwater wishes to file a motion to dismiss, it must do so in a separate filing. Thus, this Order does not determine if issues should be dismissed, or if OAH has jurisdiction.

MEDIATOR

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. 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).
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. 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.

IT IS SO ORDERED.

DATED: October 28, 2019

DocuSigned by:
Marlo Nisperos
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Marlo Nisperos
Administrative Law Judge
Office of Administrative Hearings