BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

NEWARK UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023030525

ORDER OF DETERMINATION OF INSUFFICIENCY IN PART OF DUE PROCESS COMPLAINT

APRIL 3, 2023

On March 16, 2023, Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Newark Unified School District. On March 29, 2023, Newark Unified filed a Notice of Insufficiency as to the complaint.

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.)

Student's complaint alleges one issue which contains two claims, one which is sufficient and one which is insufficient. The issues are discussed below.

Student's Issue One is complaint is sufficient, in part, alleging Newark Unified denied Student a free appropriate public education during the 2022-2023 school year by failing to implement Student's resource class program and push-in resource push-in services, and counseling as contained in Student's individualized education programs. An individualized education program is called an IEP. Student's complaint is sufficiently pled to put Newark Unified on notice as to the basis of Student's claim that Newark Unified failed to implement Student's resource class program and push-in services, and counseling during the 2022-2023 school year.

Student's complaint references a California Department of Education compliance investigation report as an attachment to Student's complaint which was provided to OAH as a separate filing. Newark Unified contends it never received the attachment, and Student has not filed a corresponding proof of service with OAH. Therefore, any additional issues addressed in the compliance investigation report which were not included in Student's issue as defined above, are not part of Student's complaint.

Student's claim regarding a comprehensive independent educational evaluation, fails to allege what assessments were requested, why they were requested or when were they requested. The complaint fails to provide Newark Unified with the required problem descriptions. Therefore, Student has failed to state sufficient facts supporting a request for a comprehensive independent educational assessment, and the claim 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 claiming Newark Unified denied Student a free appropriate public education during the 2022-2023 school year by failing to implement Student's resource class program and push-in resource push-in services, and counseling as contained in Student's individualized education programs is sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).
2. Student's complaint regarding a comprehensive expert evaluation is 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 the issue of whether Newark Unified denied Student a free appropriate public education during the 2022-2023 school year by

failing to implement Student's resource class program and push-in resource push-in services, and counseling as contained in Student's individualized education programs.

IT IS SO ORDERED.

Judith Pasewark

Judith Pasewark

Administrative Law Judge

Office of Administrative Hearings