BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

OAKLAND UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2019080841

ORDER OF DETERMINATION OF INSUFFICIENCY OF FIRST AMENDED COMPLAINT IN PART

On August 22, 2019, Student filed a due process hearing request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Oakland. On December 3, 2019, Student requested to file a first amended complaint in this matter which was granted by OAH on December 5, 2019. On December 17, 2019, Oakland filed a notice of insufficiency as to Student's first 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).

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

OAH granted Student's request to file a first amended complaint on December 5, 2019. Oakland's notice of insufficiency was dated, filed with OAH, and served on December 17, 2019, fewer than 15 days after it received Student's first amended complaint. Thus, Oakland's notice of insufficiency is timely.

Student's first amended complaint is an 11-page narrative that includes separate headings entitled: case summary; supporting background facts; denial of free appropriate public education, known as FAPE, claims; and proposed resolutions. Student sets forth three causes of action listed under the heading, denial of FAPE claims. Issue number one and three are insufficiently pled because they fail to give Oakland the requisite notice as to the description of the nature of the problem and facts related to that problem forming the basis of the first amended complaint. Issue number two is insufficient, in part.

Student's issue one states that Oakland denied Student a FAPE throughout the 2017-2018 school year. This cause of action is vague, overly broad, and insufficient. Student's issue number one, as written, could include a multitude of separate causes of action during the 2017-2018 school year, including both substantive and procedural violations. Student's issue one, however, fails to provide any further information as to give Oakland notice as to what the actual legal claims are alleged against it.

Instead, Student includes a six paragraph narrative that intertwines both factual allegations and legal arguments that are unclear and confusing as to what the actual FAPE violations entail. Additionally, the narrative includes allegations that could be

construed as outside of OAH's jurisdiction. As currently stated, it is impossible to discern what legal violations are raised against Oakland. As such, Student's issue one fails to provide Oakland with the required notice of description and the facts relating to the problem. Student is advised to enumerate separate legal issues as to the separate FAPE violations throughout the 2017-2018 school year, or include sub-issues for the separate FAPE violations.

Student's issue three suffers the same fate as his first issue. Issue number three states that Oakland denied Student a FAPE through the 2018-2019 school year. As drafted, issue three is too general and deficient. This issue could include numerous substantive and procedural FAPE violations, and fails to give Oakland any comprehension of the legal claims during the 2018-2019 school year. Furthermore, the two plus pages of narrative following Student's issue three statement further confuses the matter by weaving together factual allegations with possible legal arguments, making the task of determining legal claims impossible to unravel. Because of this, Student's issue three is insufficient as pled. Student is advised to state separate cause of action for each FAPE violation during the 2018-2019 school year, or include delineated sub-issues for each FAPE violation.

Issue number two is sufficiently pled, in part, and insufficiently pled, in part. Student puts Oakland on notice as to the alleged legal incompliance of its academic, speech and language, psychological, and ERMHS evaluations conducted for Student's triennial assessments in or around September 2017 through November 2017, as stated on page seven of Student's first amended complaint. Any further alleged legal claims in this section, if any, are not sufficiently pled, and do not give Oakland the required notice as to the description of the nature of the problem and facts related to that problem. If Student is alleging any further violations beyond the legal incompliance of Oakland's

academic, speech and language, psychological, and ERMHS triennial evaluations conducted at or around September 2017 through November 2017, he is advised to state them separately.

ORDER

1. Student's first amended complaint is insufficiently pled under section title 20 United States Code 1415(c)(2)(D), as to issue one, issue two, in part, and issue three.
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.

DATED: December 19, 2019

DocuSigned by:
Cynthia Fritz
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Cynthia Fritz
Administrative Law Judge
Office of Administrative Hearings