BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. WASHINGTON UNION ELEMENTARY SCHOOL DISTRICT.	OAH Case No. 2019030120 ORDER DETERMINING DUE PROCESS COMPLAINT SUFFICIENT

On March 04, 2019, Parents on behalf of Student filed a Due Process Hearing Request (complaint) with the Office of Administrative Hearings naming Washington Union Elementary School District.[1]

On March 5, 2019, Student filed two documents entitled Notice of Representation, Due Process Complaint and Request for Due Process Hearing on Behalf of Student. Other than an attorney's signature on one but not the other, the documents were identical. On March 12, 2019, OAH issued an order deeming Student to have filed an amended complaint, granted leave to amend, deemed the amended complaint filed March 12, 2019, and issued a new Scheduling Order on the Amended Complaint.

On March 20, 2019 Washington filed a Notice of Insufficiency.

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).

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 of the problem to the extent known and available to the party at the time. (20 U.S.C.

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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).

§ 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 alleges that there was a denial of FAPE for the years 2012-2013, 2013-2014, 2014-2015, 2015-2016, 2016-2017, and 2017-2018. Student claims Washington denied a FAPE by failing to timely evaluate Student, despite having sufficient evidence to suspect Student was disabled from 2012 to June of 2018. This included parents raising specific concerns over those years, and Washington's convening "Team for Education Assistance" meetings during kindergarten and second grade in response to parents' concerns. Student enumerates nine remedies for the alleged denial of FAPE, including compensatory education, services and reimbursement. Student alleges that under *Avila v. Spokane School* District, (9th Cir. 2017), 852 F.3d 936, the two-year statute of limitations does not apply as the parents did not have notice of an IDEA claim until 2018, when they obtained their own assessment.

The facts alleged in Student's amended complaint, deemed filed on March 12, 2019, are sufficient to put Washington on notice of the issues forming the basis of the complaint, including the statute of limitations exception claim. Student's complaint identifies the issues and adequate related facts about the problem to permit Washington to respond to the complaint and participate in a resolution session and mediation.

Therefore, Student's statement of the issues is sufficient.

Student's proposed resolutions request is also sufficient. 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 stated in Student's complaint are sufficiently defined requests and meet the statutorily required standard of stating a resolution to the extent known and available to Student at the time.

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.

DATE: March 22, 2019

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BRIAN H. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings