BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: STUDENT, v. CHOWCHILLA UNION HIGH SCHOOL DISTRICT.	OAH Case No. 2016060671 ORDER DETERMINING AMENDED COMPLAINT TO BE PARTIALLY SUFFICIENT

Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings on June 9, 2016, naming the Chowchilla Union High School District. In an order dated June 15, 2016, OAH found Student's complaint to be insufficient based on Student's failure to identify the dates of the individualized education programs she alleged failed to offer her a free appropriate public education, and when Student requested that District convene IEP team meetings for her. Student also failed to specify the time frame she was contending District failed to offer her a FAPE.

Student filed an amended complaint on June 22, 2016. District timely filed a notice of insufficiency as to the amended complaint on June 27, 2016.

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. § 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

[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).

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 amended complaint contains several unnumbered allegations, some of which are sufficient and others of which are insufficient as plead. Student's amended complaint alleges that she was denied a FAPE from July 1, 2014, to June 30, 2016, because District: a) denied Student access to a full curriculum of educational courses and the least restrictive environment because she was steered to placements that did not provide courses supporting college and career goals; b) placed Student in programs with severely emotionally disturbed and low-functioning students that negatively impacted Student's academic learning and personal growth and/or placed her in programs that were counter to Student's learning disabilities; c) denied Student compensatory services in support of her receiving a FAPE; and d) refused to re-enroll Student at Chowchilla High School.

Student continues by alleging that these violations occurred during IEP team meetings held on September 18, 2014, December 8, 2014, March 19, 2015, September 15, 2015, November 5, 2015, and March 31, 2016. In addition to alleging that the meetings resulted in substantively flawed IEP's as described above, Student alleges that the meetings were procedurally defective because they were not convened expeditiously and because they were tainted by transgender animus based on Student's status as a transgender person.

District contends that Student's amended complaint is insufficient in several ways. First, District contends that the amended complaint failed to define Student's specific placements and state what the specific challenges are to each of the many placements Student had during the time period at issue. District also contends Student failed to give enough facts to support the allegations.

Although Student's issues as stated are not a model of clarity, it is not necessary for Student to describe each of the placements in detail because she has alleged that all placements during the applicable time period were substantively flawed for the reasons stated as issues (a), (b), and (d) above. Student alleges that she was denied a FAPE because the placements did not support her college and career goals, that the placements did not address her disabilities and were with other students whose disabilities were dissimilar to hers and negatively impacted her learning. Student alleges further that District refused to re-enroll her in a high school to which she wished to return. Those substantive issues put District on notice of why Student believes her programming over an approximate two-year period of time failed to offer her a FAPE. District has been provided with enough information for it to respond to the allegations, prepare for resolution and mediation sessions, and defend against the complaint if necessary at a due process hearing.

However, District's assertion of insufficiency is well-taken with regard to issue (c). Student contends that she was denied "compensatory services" to support her receipt of a FAPE. Student fails to state why she is owed compensatory services, why she requires them, in what areas she requires them, and what the compensatory services should have been. This allegation is therefore insufficient to provide District with the proper notice of what the issues are against which it must present a defense.

District also contends that Student's allegations are deficient because Student failed to specify the procedural violations District supposedly committed. District also contends that Student's allegation that her IEP process was tainted by transgender animus is outside of OAH jurisdiction. District further contends that, in any case, the allegation does not provide any information as to how the animus occurred and how, if it did occur, it interred with Student's right to receive a FAPE.

District is correct that the issue alleging transgender animus is insufficient as pled. OAH does not have jurisdiction in special education proceedings over allegations of discrimination except to the extent that the District's actions resulted in a denial of a FAPE to Student. Here, Student fails to state how District manifested transgender animus or discrimination and, if District did so, how District's actions interfered with Student's right to receive a FAPE. This issue is insufficient as pled.

The only other procedural violation specifically alleged by Student is that the six IEP team meetings at issue were not held expeditiously. This allegation is also insufficient because it fails to state in what manner the IEP team meetings were untimely. Student fails to state when the meetings should have been held, whether they were untimely based upon Student's request for IEP team meetings or based on statutory time violations, and the amount of delay Student is alleging occurred.

No other procedural violations are specifically alleged by Student. If Student is, in fact, contending that there were additional procedural violations, she must specify what they were and how the violations interfered either with her right to a FAPE or with her right to participate in the process of developing her IEP's.

ORDER

1. The following issues in Student's amended complaint, pertaining to the IEP's held during the applicable two-year statute of limitations, are sufficiently plead under title 20 U.S.C. section 1415(b)(7)(A)(ii):

a) Allegation that District denied Student access to a full curriculum of educational courses and the least restrictive environment because she was steered to placements that did not provide courses supporting college and career goals;

b) Allegation that District placed Student in programs with severely emotionally disturbed and low-functionally students that negatively impacted Student's academic learning and personal growth and/or placed her in programs that were counter to Student's learning disabilities; and

c) Allegation that District should have permitted Student to attend Chowchilla High School.

2. The following issues in Student's amended complaint are insufficiently pled under title 20 United States Code section 1415(c)(2)(D):

a) Allegation that District denied Student compensatory services in support of her receiving a FAPE; and

b) Allegation that District displayed transgender animus during the IEP process.

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

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.

[2] 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 issues described in paragraphs 1(a) through 1(c) of this Order.

DATE: July 1, 2016

DocuSigned by:
Darrell Lepkowsky
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DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings