BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

BEVERLY HILLS UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2019120456

ORDER OF DETERMINATION OF PARTIAL SUFFICIENCY OF AMENDED DUE PROCESS COMPLAINT

On December 11, 2019 Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Beverly Hills Unified School District, referred to as Beverly Hills. On December 26, 2019, Beverly Hills filed a Notice of Insufficiency as to the complaint.

On December 27, 2019, OAH issued an Order of Determination of Partial Sufficiency of Due Process Complaint. On January 9, 2020, Student filed an amended complaint that provided additional information concerning Student's Issues 1, 2 and 4. On January 22, 2020, Beverly Hills 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.)

A notice of insufficiency is not a summary judgment motion or motion to dismiss, and does not involve a determination of undisputed facts, or whether the facts alleged, if accepted as correct, would be sufficient to support a claim under the IDEA.

DISCUSSION

OAH's December 27, 2019 order determined Student's original complaint did not allege any facts to enlarge the usual two-year statute of limitations. (Ed. Code, § 56505, subd. (l).) Of Student's four issues for hearing, OAH found Student's Issue 2 sufficient to provide Beverly Hills and awareness and understanding of Student's claim that Beverly Hills denied Student a free appropriate public education, referred to as a FAPE, by failing to include clear goals for Student in the individualized education programs, referred to as IEPs, developed for Student within the two-year statute of limitations. OAH found Student's Issue 3 sufficient to provide an awareness and understanding of Student's claim that Beverly Hills denied Student a FAPE by failing to offer Student an appropriate placement from January 2018 to the filing of the complaint.

OAH found the original complaint failed to describe or state facts sufficient to put Beverly Hills on notice of any other claim. OAH determined Student's Issue 1, alleging Beverly Hills failed to appropriately assess Student, to be insufficient because, among other things, Student did not allege facts indicating the areas of suspected disability Beverly Hills failed to assess, what types of evaluations Beverly Hills should have conducted, and when Beverly Hills should have assessed Student. OAH determined Student's Issue 4, alleging Beverly Hills publicized an alleged event of sexual harassment involving Student and misled Parents into withdrawing Student from Beverly Hills by

misrepresenting that the district would place Student at Westmark School, to be insufficient because it alleged no facts distinguishing it from Student's Issue 3.

Student's January 9, 2020 amended complaint provided additional information concerning Student's Issues 1, 2 and 4. As to Student's Issue 1, Student alleged he struggled academically and socially due to poor self-regulation, poor executive functioning, low frustration tolerance, and minimal coping skills. Student alleged Beverly Hills should have reassessed Student in January 2018 after receiving a letter from an expert hired by Parents. Student also alleged Beverly Hills should have reassessed him "when the holes in his IEP became evident," "when it became evident that the severity of Student's needs continued to increase," or following "Parents repeated conversations about their growing concerns." Student did not specify when any of these alerting events took place, nor did he identify his areas of suspected disability requiring assessment, or the types of assessments Beverly Hills should have conducted.

As to Issue 2, Student alleged Beverly Hills denied Student a FAPE from November 9, 2017 by failing to provide appropriate goals to address Student's needs with self-regulation, poor executive functioning, low frustration tolerance, and coping skills, and by failing to offer Student positive interventions to address his disruptive behaviors.

As to Issue 4, Student alleged Beverly Hills denied him a FAPE by negligently allowing an investigative report identifying Student as having been charged with serious misconduct to leave its offices and become public.

Issue 1 is insufficiently plead to put Beverly Hills on notice as to the basis for Student's claims. Student provided some additional information compared to the original complaint. He stated he struggled with poor self-regulation, poor executive functioning, low frustration tolerance, and minimal coping skills, and should have been assessed by Beverly Hills after it received a January 2018 letter from an expert hired by Parents. However, Student failed to specify the areas of suspected disability Beverly Hills should have assessed, or what types of assessments Beverly Hills should have conducted. Without this information, Beverly Hills is not in a position to file an adequate response to Student's complaint or participate in mediation as it does not know the assessment areas it allegedly failed to assess adequately.

Issue 2 is sufficiently plead to put Beverly Hills on notice of Student's claims that Beverly Hills denied Student a FAPE in his IEP's within the two-year statute of limitations, by failing to provide appropriate goals to address Student's needs with self-regulation, poor executive functioning, low frustration tolerance, and coping skills, and by failing to offer Student positive interventions to address his disruptive behaviors.

Student's statement of his Issue 3 remains substantively unchanged from the original complaint. It remains sufficient to put Beverly Hills on notice of Student's claim that Beverly Hills denied Student a FAPE by failing to offer Student an appropriate placement from January 2018 to the filing of the complaint.

Issue 4 is sufficiently plead to put Beverly Hills on notice of Student's claim that Beverly Hills denied Student a FAPE by negligently allowing an investigative report identifying Student as having been charged with serious misconduct to leave its offices and become public.

ORDER

1. Issue 2, Issue 3, and Issue 4 are sufficiently pleaded under title 20 U.S.C. section 1415(b)(7)(A)(ii) to put Beverly Hills on notice of claims arising within the two-year statute of limitations, as identified in this Order.
2. Issue 1 is insufficiently pled under title 20 United States Code section 1415(c)(2)(D).
3. Student shall be permitted to file a second amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).
4. The second 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 a second amended complaint will restart the applicable timelines for a due process hearing.
5. If Student fails to file a timely second amended complaint, the hearing shall proceed only on Student's claims in Issues 2, 3 and 4 in Student's amended complaint, as identified in this Order.

IT IS SO ORDERED.

DATED: January 27, 2020

DocuSigned by:

Robert G. Martin
Administrative Law Judge
Office of Administrative Hearings