BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

ESCONDIDO UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2020060048

ORDER DETERMINING ISSUE 3 TO BE INSUFFICIENT, AND ISSUE 6 TO BE SUFFICIENT

JUNE 11, 2020

On May 29, 2020, Student filed a due process hearing request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Escondido Union High School District. On June 10, 2020, Escondido filed a notice of insufficiency as to Issues 3 and 6 of Student's 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, called a FAPE; (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

Student's complaint alleges that he currently lives with Parents within Escondido boundaries. It alleges that Escondido has failed to offer Student a FAPE from eighth grade through tenth grade, despite Student's escalating behaviors and suspensions, and his failing grades. Issue 3 claims that Escondido denied Student a FAPE in the individualized education program, or IEP, of March 22, 2019 by failing to include accurate present levels of performance or appropriate and measurable goals, and by failing to offer appropriate special education and related services. The complaint itself does not allege any facts regarding any March 22, 2019 IEP. Escondido challenges the sufficiency of Issue 3.

Student does not plead any facts regarding an IEP team meeting, or an IEP, dated March 22, 2019. Accordingly, the complaint does not provide enough information to give Escondido an awareness and understanding of the alleged claim forming the basis of Issue 3.

Escondido also challenges the sufficiency of Issue 6. Issue 6 alleges that despite escalating behaviors and a suspension, Escondido did not offer to assess Student or offer services to address those behaviors at the IEP team meeting of May 31, 2018, when Student would have been in eighth grade. Escondido asserts that it is a high school district that does not provide services to students in eighth grade, and was not responsible for Student at the time of his May 31, 2018 IEP.

Student alleges that he is currently residing with Parents inside of Escondido's boundaries, and that Escondido was the school district responsible for Student's education at all relevant times. Whether or not Student was actually residing in and enrolled in Escondido in eighth grade, and some high school districts do serve the

middle school grades, is an issue of fact to be decided at an evidentiary hearing. The claim at Issue 6, as alleged, provides Escondido with an awareness and understanding of the alleged procedural and substantive errors involving the May 31, 2018 IEP, and is sufficiently pled.

ORDER

1. Student's Issue 3 is insufficiently pled under section title 20 United States Code 1415(c)(2)(D).
2. Student's Issue 6 is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
3. Student will be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).
4. The amended complaint must comply with the requirements of title 20 U.S.C. section 1415(b)(7)(A)(ii), and must 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, Issue 3 will be dismissed, and the hearing will proceed only on Issues 1, 2, 4, 5 and 6 of Student's complaint.
6. All dates previously set in this matter are confirmed.

IT IS SO ORDERED.

DocuSigned by:
Alexa Hohensee
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Alexa Hohensee

Administrative Law Judge

Office of Administrative Hearings