BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017061030
v.	ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT AS TO ISSUES 2, 3 AND 4.
BIG VALLEY JOINT UNIFIED SCHOOL DISTRICT.	

On June 22, 2017, Parent on Student's behalf filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming Big Valley Joint Unified School District (Big Valley). The complaint listed four issues, the first of which was determined by OAH to be an expedited issue. OAH set this matter for dual hearings on the expedited and non-expedited issues. On June 29, 2017, Big Valley timely filed a notice of insufficiency as to Issues 2 through 4 of Student's complaint. Student filed a response on June 29, 2017.

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).

Title 20 United States Code section 1415(k)(3) permits a party to request an expedited hearing to appeal a decision regarding a disciplinary change of placement, such as placement in an alternative education setting or a manifestation determination regarding student conduct. This section requires an expedited hearing to occur within 20 school days of the date the hearing is requested. There is no provision similar to that in title 20 United States Code section 1415(c)(2)(A) for testing the sufficiency of a request for an expedited hearing pursuant to section 1415(k). Indeed, there is insufficient time to complete the NOI process in expedited hearings.

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,

[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).

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 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 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).)

DISCUSSION

District challenges Student's Issues 2 through 4 and all of his proposed resolutions.

Student alleges that he was accused of hitting a teacher on May 6, 2017. District placed him on extended suspension and excluded him from school for the remainder of the year. District held a manifestation review meeting on May 18, 2017, when it determined Student's May 6, 2017 behaviors were not a manifestation of his disability. Student is now scheduled for expulsion.

In Issue 1, Student challenges District's manifestation determination. That issue, which requires an expedited hearing, is not addressed by this Order for the reasons discussed above.

Issue 2 asserts that District offered Student a suspension of expulsion agreement, which Parent challenges. Parent contends the terms of the proposed agreement require Parent to waive rights, and are not negotiable. The issue is insufficient because it does not state facts that support an issue arising under the IDEA over which OAH has jurisdiction, namely relating to the identification, evaluation, or educational placement of the child, or the

provision of a free appropriate public education to the child. The procedural aspects of the expulsion process are outside of OAH jurisdiction. Student's proposed resolution is for an order that Big Valley establishes a community day school for local students, which is also insufficient because it does not relate to a remedy over which OAH has jurisdiction. Issue 2 is insufficiently pleaded. Student will be granted leave to amend the complaint.

Issue 3 alleges that an expulsion hearing is scheduled for Student on June 28, 2017. Parent seeks mediation and a due process hearing on "issues revolving around manifestation determination and behavior intervention plan." The manifestation determination is addressed in Issue 1. However, Parent failed to plead any specific facts to put District on sufficient notice of the claim in Issue 3 as it relates to the behavior intervention plan. For example, Student has not pleaded any facts relating to whether Student had an individualized education program that included a behavior intervention plan, whether District failed to offer Student a behavior intervention plan at any particular individualized education program team meeting, what relation the failure to implement a behavior intervention plan, or lack of a plan, had to his behaviors prompting the manifestation determination, or any other facts that would put Big Valley on notice of what Student's claims are in Issue 3. As a proposed resolution, Parents asks for a stay put order.[2] Issue 3 is insufficiently pleaded as to the claims and proposed resolution. Student will be granted leave to amend the complaint.

Issue 4 alleges that, during the 2014-2015 and 2015-2016 school years, Student, who was in the fourth and fifth grades at the time, attended at least 50 percent of his school day at a high school with older, badly influencing students. He was given few opportunities for meaningful social interaction with staff and students and to learn socially acceptable behavior. Student's proposed resolution alludes to alternative placements for Student to address his need for "intense intervention for rehab purposes." Although Issue 4 can be interpreted to challenge Student's placement during the asserted time period, the complaint does not state sufficient facts to put District on notice of the claim. For example, Student does not plead facts establishing which IEP offered him placement in the challenged high school, what the placement offer was, what school he was placed at, or what his unique needs were relating to his proposed resolution for "intense intervention for rehab purposes." Student will be granted leave to amend the complaint.

A parent who is not represented by an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. (Ed. Code, § 56505.) Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

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[2] Student filed a separate motion for stay put which OAH denied in an Order dated June 29, 2017.

ORDER

1. Student's Issue 1 is an expedited issue under title 20 United States Code section 1415(k)(3) and therefore shall proceed to hearing on July 19, 2017, as scheduled, unless withdrawn or otherwise ordered by OAH.

2. Student's Issues 2, 3 and 4 of the complaint are not expedited issues and are insufficiently pled under section title 20 United States Code 1415(c)(2)(D).

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

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 calendar days from the date of this order.

5. If Student fails to file a timely amended complaint, the complaint will proceed to hearing only on Issue 1.

6. All dates relating to the unexpedited issues of the complaint are vacated.

DATE: July 5, 2017

DocuSigned by:
Adrienne L. Krikorian
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ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings

[3] The filing of an amended complaint will restart the applicable timelines for a due process hearing.