BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SAN DIEGO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021060397

ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

JUNE 22, 2021

On June 9, 2021, Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming San Diego Unified School District, called San Diego. On June 21, 2021, San Diego filed a Notice of Insufficiency as to 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).

Minimal pleading standards apply to requests for due process pursuant to the Individuals with Disabilities Education Act. (*Schaffer ex rel. Schaffer v. Weast,* (2005) 546 U.S. 49, 54 [126 S.Ct.528, 163 L.Ed.2d 387.] 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.) A complaint is also 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

The facts alleged in Student's complaint are sufficient. Three issues are alleged in Student's complaint. Student's Issue One alleges that San Diego denied Student a FAPE by failing to offer appropriate, consistent, clear supports and accommodations in Student's current IEP, identified in the complaint as Student's February 2021 IEP. Specifically, Student alleges that the IEP offer uses vague terms such as "tools will be given to access help". Issue One also alleges that during the Covid-19 global pandemic, San Diego failed to give Student any clear tools to support Student's academic success. Student alleges San Diego failed to implement components of the IEP. Specifically, that Student's push-in support, friendly reminders to complete tasks, extended time to complete assignments and assessments, access to teacher notes, and other supports as outlined in Student's February 2021 and previous 2020 IEP, were not implemented. Lastly, Issue One alleges Student's progress during distance learning was not monitored. Student requests as proposed resolutions for Issue One, that Student is observed in distance learning to determine needed supports to access the general education curriculum. Student also requests that Student's direct services hours for specialized academic instruction and career and college awareness direct service hours be adjusted and that San Diego provide compensatory services to make up for those not provided pursuant to Student's 2021 and 2021 IEP's.

Issue Two of Student's complaint alleges that San Diego denied Student a FAPE by failing to notify Student's family of Student's chronic absenteeism and failure in

classes. Issue Two also alleges that San Diego failed to offer Student opportunities for credit recovery or additional supports to successfully attain a FAPE. Student's proposed resolutions include removal of Student's case manager and adequate training for the case manager in the implementation of IEP's, specifically training on how to best assist Students diagnosed with inattention and auditory memory deficits.

Issue Three of Student's complaint alleges that San Diego convened an IEP team meeting without appropriate team members, specifically, an administrative designee, specifically the Vice Principal. Student also alleges that the case manager did not appear to know whether the meeting was an IEP team meeting or an informal action. Student's proposed resolution is training for the vice principal and case manager regarding the provision of a FAPE to students.

All of the issues alleged, and proposed resolutions requested, in Student's complaint contain adequate facts about the problems to permit San Diego to respond and participate in a resolution session and mediation, and to prepare for hearing. San Diego's contention that the entirety of Student's complaint is insufficient is not persuasive. Accordingly, Student's statement of Issues One Two and Three, and proposed resolutions, are sufficient.

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.

Rita Defilippis

Rita Defilippis

Administrative Law Judge

Office of Administrative Hearings