BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES COUNTY OFFICE OF EDUCATION,
SAN BERNARDINO COUNTY OFFICE OF EDUCATION, AND
VICTOR VALLEY UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2020040776

ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT; DISMISSING ISSUES B(II), B(III), AND ISSUES C THROUGH H AS TO VICTOR VALLEY UNION HIGH SCHOOL DISTRICT; DISMISSING VICTOR VALLEY UNION HIGH SCHOOL DISTRICT FROM EXPEDITED HEARING

MAY 06, 2020

On April 23, 2020, Parent on behalf of Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Los Angeles County Office of Education, San Bernardino County Office of Education, and Victor Valley Union High School District. On May 4, 2020, Victor Valley filed a Notice of Insufficiency as to the complaint and a motion to dismiss claims that exceed the two-year statute of limitations. Student opposed the Notice of Insufficiency and motion to dismiss on May 5, 2020.

The motion to dismiss must be filed separately from a Notice of Insufficiency and will not be considered herein because of the differing legal standards of review. Victor Valley may refile the motion to dismiss.

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).

Title 20 United States Code section 1415(k)(3) permits a party to request an expedited hearing for specific reasons. Specifically, an expedited hearing can be requested to appeal to appeal 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 start within 20 school days from the hearing request. There is no provision for expedited hearings under section 1415(k) to test the complaint's sufficiency. Indeed, there is insufficient time to complete the NOI process in expedited hearings.

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.)

DISCUSSION

Student's complaint alleges eight issues with various subsections, identified as issues A through H. Issue A requests an extension to the two-year statute of limitations

that will not be considered herein. As to the remaining issues, Victor Valley is identified only in issue B(I).

Student's issue B(I) alleges that Victory Valley denied him a free appropriate public education during the 2015-2016 school year, by failing to refer him for special education and related services, a Child Find violation. Student alleges he demonstrated behavior problems and poor grades during this time, which supported a referral for special education. As a remedy, Student requests compensatory education.

The facts alleged in Student's complaint are sufficient as to issue B(I). Student's complaint identifies the issues and adequate facts about the problem to permit Victor Valley to respond to issue B(I) and participate in a resolution session and mediation.

Therefore, Student's statement of B(I), as to Victor Valley, is sufficient.

Student's issues B(II) and B(III), and all of issues C through H, are insufficiently plead as to Victor Valley. The complaint fails to provide Victor Valley with the required problem description and the facts relating to the problem for those issues.

Consequently, with respect to issues (B)(II), B(III), and all of issues C, D, E, F, G, and H, each claim is insufficient as to Victor Valley. Therefore, these claims are dismissed as to Victory Valley. Issue G includes an expedited claim, that is insufficiently plead as to Victor Valley. Therefore, Victor Valley is dismissed from the expedited hearing for this matter.

ORDER

1. Issue B(I) of Student's complaint is sufficient as to Victor Valley under title 20 U.S.C. section 1415(b)(7)(A)(ii).

2. Issues B(II), B(III) and all of issues C through H, are insufficiently plead as to Victory Valley under title 20 United States Code section 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).
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. The filing of an amended complaint will restart the applicable timelines for a due process hearing.
5. Victor Valley is dismissed from the expedited hearing for this matter
6. If Student fails to file a timely amended complaint, the non-expedited hearing shall proceed only on Issue (B)(I) as to Victor Valley.
7. The expedited hearing and non-expedited hearing shall proceed as scheduled as to Los Angeles County Office of Education and San Bernardino County Office of Education, unless otherwise ordered.
8. Victor Valley may resubmit its May 4, 2020 motion to dismiss claims beyond the statute of limitations in a separate motion to dismiss.

IT IS SO ORDERED.

DocuSigned by:
Paul H. Kamoroff
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Paul H Kamoroff

Administrative Law Judge

Office of Administrative Hearings