BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

WEST COVINA UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022060216

ORDER OF DETERMINATION OF INSUFFICIENCY OF DUE PROCESS COMPLAINT

JUNE 22, 2022

On June 7, 2022, 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 West Covina Unified School District. On June 21, 2022, West Covina filed a Notice of Insufficiency as to the 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.)

DISCUSSION

Student's complaint alleges one sufficiently pled claim and three insufficiently pled claims. Student's issue one states: "District failed in its "Child Find" obligation prior to October 1, 2021 by failing to refer Student for a comprehensive special education assessment, when Student's academic and emotional struggles indicated Student was in need of special education services." The complaint includes sufficient facts about this alleged problem. As such, issue one is sufficiently pled.

Student's issue two, three, and four are insufficiently pled. Student's compliant states:

> "2. District denied Student a Free and Appropriate Public Education (FAPE) as they failed to assess Student in all areas of suspected disability by failing to conduct a functional behavior assessment (FBA).
>
> 3. District denied Student a FAPE as they failed to offer Student an ABA trained one to one aide.
>
> 4. District denied Student a FAPE as they failed to offer Student appropriate placement in the Least Restrictive Environment (LRE)."

Student's issue two is not clear, as it does not specify whether he is alleging a failure to assess before he was found eligible, after, or both as the preceding Factual Background allegations does not provide any clarity. Student's issues three and four are not sufficiently pled because they and the Factual Background do not describe the time period or individualized education programs related to the issues. Thus, issues two, three, and four of the complaint fail to provide West Covina with the required problem description and the facts relating to the problem and are therefore insufficiently pled.

ORDER

1. Issue one of Student's complaint is sufficiently pled under section title 20 United States Code 1415(b)(7)(A)(ii).
2. Issues two, three, and four of Student's complaint 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).
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. If Student fails to file a timely amended complaint, the hearing shall proceed only on issue one in Student's complaint.

IT IS SO ORDERED.

Cararea Lucier

Cararea Lucier
Administrative Law Judge
Office of Administrative Hearings