BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ANTELOPE VALLEY UNION HIGH SCHOOL DISTRICT.	OAH Case No. 2019050046 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT; ORDER DENYING MOTION TO DISMISS ANTELOPE VALLEY UNION HIGH SCHOOL DISTRICT AS A PARTY

On May 1, 2019, Parent on behalf of Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming Antelope Valley Union High School District. On May 9, 2019, Antelope Valley Union filed a timely Notice of Insufficiency as to Student's complaint and moved to be dismissed as a party.

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).

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, 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.)

[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).

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

The facts alleged in Student's complaint are sufficient to put Antelope Valley Union on notice of the issues forming the basis of the complaint. Student's Issue 1 contends that Antelope Valley Union failed to conduct an appropriate educationally related intensive counseling services assessment at the beginning of the 2018-2019 school year by allegedly failing to obtain rating scales from any of Student's teachers.

With respect to Issues 2 and 4 related to the April 2, 2018 individualized education program and subsequent amendments, Student contends that Antelope Valley Union failed to develop an IEP that was designed to provide more than a de minis benefit to Student and was not reasonably calculated to enable Student to make progress in light of his circumstances. Student's complaint describes Antelope Valley Union's alleged failures to amend the April 2, 2018 IEP during the 2018-2019 school year to address Student's difficulty with staying on task and completing and turning in assignments. The complaint further argues that Antelope Valley Union failed to provide accommodations that Student claims he was entitled to during the 2018-2019 school year, such as the use of a calculator, preferential seating, and checking for understanding. Student's Issues 3 and 5 contends Antelope Valley Union continued these failures in its March 28, 2019 IEP's offer of FAPE, in addition to failing to offer goals aimed to improve Student's ability to complete and organize his assignments.

The complaint contains enough facts regarding alleged failures on the part of Antelope Valley Union to provide Antelope Valley Union with an awareness and understanding of the alleged violations. In construing the pleading requirements liberally, the complaint sufficiently identifies the issues and adequate related facts about the problems to permit Antelope Valley Union to respond to the complaint and to prepare for a due process hearing. Accordingly, Antelope Valley Union's motion to be dismissed as a party is denied.

Student's proposed resolution requests Antelope Valley Union fund an independent educationally related intensive counseling services assessment and provide Student with 320 hours of compensatory educational services, in addition to 72 hours of educational therapy. 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).) The proposed resolution stated in Student's complaint are well-defined requests and meet the statutorily required standard of stating a resolution to the extent known and available to Student at the time.

ORDER

1. The complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).

2. The prehearing conference and hearing dates in this matter are confirmed.

3. Antelope Valley Union's motion to be dismissed as a party is denied.

DATE: May 14, 2019

DocuSigned by:
Rommel P. Cruz
1A1EBDA0DE9347...

ROMMEL P. CRUZ
Administrative Law Judge
Office of Administrative Hearings