BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. BURBANK UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018090148 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On September 5, 2018, Parents on behalf of Student filed a Due Process Hearing Request with the Office of Administrative Hearings, naming Burbank Unified School District. On October 9, 2018, OAH granted the parties' joint request to continue the hearing dates. On January 10, 2019, OAH issued an order granting Student's first request to amend his complaint. On January 28, 2019, OAH issued an order finding Student's issues two and three of the amended complaint insufficient and permitted Student to file a second amended complaint within 14 days of the order. On February 1, 2019, OAH granted in part Burbank's motion to dismiss, and ordered that Student's issues two and three be dismissed for lack of jurisdiction.

On February 11, 2019, Student filed a second amended complaint with OAH, naming Burbank, which OAH granted on February 14, 2019. In the second amended complaint, Student's issue's two and three are substantially different than the issues dismissed by OAH.

On March 1, 2019, Burbank filed a notice of insufficiency as to issues two and three of Student's second amended complaint.

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.)

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 alleges five claims in his second amended complaint.[1] Burbank argues that issues two and three are insufficiently pled. Student's second issue alleges that Burbank denied him a free appropriate public education by excluding him from school and related activities, created a hostile environment that interfered with his educational opportunities, and failed to ensure that he progressed. Student bases the issue upon Burbank's failure to find him eligible for special education during the 2017-2018 school year; which, if provided, Student alleges would have prevented the problems described in the issue. Student's third issue alleges that Burbank denied Student a FAPE in May 2018, by conducting an improper manifestation determination review, and alleges facts to support that claim.

The facts alleged in Student's second amended complaint are sufficient to put Burbank on notice of the issues forming the basis of the complaint. Student's second amended complaint identifies the issues and adequate related facts about the problem to permit Burbank to respond to the complaint and participate in a resolution session and mediation.

Therefore, Student's statement of issues two and three is sufficient.

[1] Student pled his issues alphabetically but will be addressed herein numerically.

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.

DATE: March 7, 2019

DocuSigned by:
Paul H. Kamoroff
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PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings