BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. COVINA VALLEY UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018031194 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On March 27, 2018, Student submitted documents to the Office of Administrative Hearings naming Covina Valley Unified School District. OAH reviewed the documents filed on March 27, 2018, and determined the documents were not a due process hearing request.[1] On April 4, 2018, Student sent several additional documents to OAH, a portion of which contained a completed OAH complaint form signed by Parent. Student's complaint will now be deemed filed on April 4, 2018.

On April 5, 2018, Covina Valley filed a notice of insufficiency as to Student's complaint that was served on OAH on April 4, 2018. Covina Valley states it received Student's complaint on March 26, 2018.

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

[1] The first page of the document filed with OAH on March 27, 2018, is the first page of the OAH form for requesting mediation and a due process hearing. The second page of the filing is the statement of service page from the OAH form. The third and fourth pages of the filing are a letter dated August 10, 2017, written by Parent and an advocate, apparently sent to Covina Valley Unified School District's Superintendent. There is no actual request for due process that is part of this filing.

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

On March 20, 2018, Covina Valley filed a due process complaint asking that it be allowed to assess Student pursuant to an assessment plan Parent allegedly consented to on January 12, 2018. OAH assigned Case Number 2018030952 to this matter. In this complaint, Covina Valley alleges facts which, if proven true, would be evidence that it has been unable to assess Student because Parent has not made arrangements to produce Student for assessment.[2]

Student raises three issues in the complaint now deemed to be filed on April 4, 2018. It is difficult to understand each of these issues as stated because they lack clarity. Problem/Complaint # 1 states, "The CVUSD [Covina Valley Unified School District] had 60 days from January 12, 2018 to March 12, 2018 to conduct "Educational Assessments" not "Physical Evaluations" with [Student]." Nine additional typed lines follow which refer to the following individuals or entities, as well as others: Selene Salcedo; "Fullerton Children Hospital Gallagher Therapy;" "California Children Service;" Sunset Elementary School; and April Figueroa. Problem/Complaint # 1 may be an attempt to explain why Parent has not produced Student for assessment, but the lack of clarity makes it impossible to determine whether or not this is correct. The Proposed Resolution # 1 again refers to several different entities and individuals who may be providing Student with physical therapy services, but

[2] There are other pending motions in that case which will be ruled upon separately.

this cannot be clearly ascertained. This paragraph continues with an assertion that a Covina Valley teacher sexually molested a child in 2016. The Proposed Resolution # 1 renders Problem/Complaint # 1 even less understandable. Covina Valley correctly claims that Problem/Complaint # 1 is insufficiently pled.

Problem/Complaint # 2 claims that "The CVUSD has been accusing our family and Derek Advocate Steven A. Figueroa of not making Derek available for assessments." The remainder of Problem/Complaint # 2 is incomprehensible. The Proposed Resolution #2 is also incomprehensible. Covina Valley correctly claims that Problem/Complaint # 2 is insufficiently pled.

Problem/Complaint # 3 states that "CVUSD has attempted to charge our son Derek Health Insurance to conduct Assessments I did not permit CVUSD to use our Family Health Insurance as a Billing Method to do." References are then made to a "Health Ombudsman in Sacramento," "Officer Huffman # 683 at WCPD," and other individuals and entities. Proposed Resolution # 3 states that "It is in the best interest for [Student] to keep 'Insurance Billing Record Information' to remain Permanently Confidential as HIPPA [Health Insurance Privacy Protection Act] Law and Private from CVUSD." Covina Valley correctly claims that Problem/Complaint # 2 is insufficiently pled.

Because Student has insufficiently pled all three issues in his complaint, the complaint does not provide Covina Valley with sufficient information to prepare for the hearing and to participate in resolution sessions and mediation.

A parent who is not represented by an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. (Ed. Code, § 56505.) Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

ORDER

1. Student's complaint is insufficiently pled under section title 20 United States Code 1415(c)(2)(D).

2. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).[3]

3. The amended complaint shall comply with the requirements of title 20 U.S.C. section 1415(b)(7)(A)(ii), and shall be filed no later than 14 days from the date of this order.

[3] The filing of an amended complaint will restart the applicable timelines for a due process hearing.

4. If Student fails to file a timely amended complaint, the complaint will be dismissed.

5. All dates previously set in this matter are vacated.

DATE: April 9, 2018

DocuSigned by:
Rebecca Freie
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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings