BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

POWAY UNIFIED SCHOOL DISTRICT

OAH CASE NUMBER 2020080526

ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

AUGUST 25, 2020

On August 18, 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 Poway Unified School District. On August 24, 2020, Poway 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.)

The parties to a due process proceeding have a right to be "accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities." (20 U.S.C. § 1415(h)(1); see also Ed. Code, § 56505, subd. (e)(1).) The right to be represented by an attorney and the right to be accompanied and advised by an individual with special knowledge or training does not mean that attorneys and individuals with special knowledge perform the same function. Attorneys are legally authorized to act on behalf of their clients and to practice law.

On September 28, 2017, the attorney general issued an opinion letter which considered whether the IDEA, the implementing regulations, and/or the California Education Code authorized a party to special education due process proceedings to be represented by a person that was not an active member of the California State Bar. The attorney general's opinion concluded that these laws did not authorize parties to a special education due process hearing to be represented by a person that is not an active member of the California State Bar in due process hearings. (100 Ops. Cal. Atty. Gen. 19 (2017).)

DISCUSSION

ADEQUACY OF COMPLAINT

Student's complaint appears to raise two issues, both of which are so vague as to be insufficiently pled. First, Student alleges that Poway has not implemented Student's educational program in his last agreed upon Individualized Education Program since March of 2020. Second, Student alleges that Poway did not provide Parents with notice of a change in Student's IEP. However, Student does not identify the IEP at issue, or the services Poway allegedly did not implement. Student's generalized allegation of a

denial of a free appropriate public education does not provide Poway with the required problem description and the facts relating to the problem.

Student's proposed resolution requests "an extensive independent evaluation of the Student to determine the need for compensatory services as well as any appropriate changes to the Student's educational program and placement." 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 is not well-defined as it does not state the areas in which Student would be independently evaluated. Furthermore, Student's request for an evaluation to discover the need for compensatory education and changes to Student's educational program and placement suggests that Student cannot sufficiently state the actual resolution he is seeking as of the time of the filing of the complaint.

REPRESENTATION OF STUDENT

Attorneys Peter G. Albert and Patrick Donohue filed the complaint on behalf of Student. Neither Attorney Albert nor Attorney Donohue appear to be authorized to practice law in the State of California as they appear only to be licensed to practice law in the State of New York. In light of the attorney general's letter, Attorneys Albert and Donohue were not authorized to file the complaint on behalf of Student. Because OAH finds Student's complaint to be insufficient and gives Student 14 days to file an amended complaint, Student can file the amended complaint through an attorney licensed to practice law in California or through Parent as a self-represented litigant. If Parent files as a self-represented litigant, Parent may be accompanied and advised by persons, including non-attorney "advocates," with special knowledge or training relating to the problems presented in special education matters, which would include Attorneys Albert and Donohue. Self-represented parties routinely prepare and file legal

documents, and participate in mediations, prehearing conferences and due process hearings.

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. 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.
4. The amended complaint shall be filed by an attorney licensed to practice in the State of California or by Parent as a self-represented litigant.
5. If Student fails to file a timely amended complaint, the complaint will be dismissed.
6. All dates previously set in this matter are vacated.

IT IS SO ORDERED.

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Cararea Lucier

Administrative Law Judge

Office of Administrative Hearings