BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

POWAY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021020272

ORDER OF DETERMINATION OF INSUFFICIENCY OF DUE PROCESS COMPLAINT

FEBRUARY 19, 2021

On February 8, 2021, Parents 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 February 17, 2021, Poway Unified School District 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 two issues. The issues are discussed below.

Issue One alleges that Parents disagreed with assessments conducted by Poway Unified School District in the areas of functional behavior analysis, psychoeducational and speech and language in connection with Student's 2019 Triennial Assessment. Issue One further alleges that Poway Unified School District agreed to Parents' request for independent educational evaluations at public expense on January 23, 2020 but does not specify in which areas. Student alleges that Poway Unified School District put conditions on the independent educational evaluations that prevented the evaluations from being completed. Issue One does not allege which evaluations are at issue, the names of the independent evaluators, whether or not the evaluations were commenced or what conditions were placed on the evaluations which prevented their completion. Therefore, Student's Issue One is insufficiently pled for failure to state sufficient facts. Student may correct this insufficiency by alleging more detailed facts about the independent educational evaluations at issue, including the identity of the assessors and facts explaining how the assessors were purportedly prevented from completing the assessments.

Issue Two alleges that Parents were denied the opportunity to participate in IEP team meetings by being prevented from discussing information about Student from independent evaluators. Issue Two is contingent on a finding in Issue One that Poway Unified School District interfered with Student's right to an independent education evaluation. As Student failed to allege sufficient facts regarding Issue One, Issue Two also fails. Therefore, Student's Issue Two is insufficiently pled for failure to state sufficient facts. Student may correct this insufficiency by correcting Issue One, and also

alleging the IEP team meetings at issue, or that no IEP team meetings could be held without the completion of the independent educational evaluations.

A parent without 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. 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. If Student fails to file a timely amended complaint, the complaint will be dismissed.
5. All dates previously set in this matter are vacated.

IT IS SO ORDERED.

Jennifer Kelly

Jennifer Kelly

Administrative Law Judge

Office of Administrative Hearings