BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

EL MONTE UNION HIGH SCHOOL DISTRICT AND

MOUNTAIN VIEW SCHOOL DISTRICT.

OAH CASE NUMBER 2023120438

ORDER DETERMINING DUE PROCESS COMPLAINT INSUFFICIENT AS TO EL MONTE UNION HIGH SCHOOL DISTRICT

DECEMBER 20, 2023

On December 11, 2023, Parent on behalf of Student filed a Due Process Hearing Request with the Office of Administrative Hearings naming El Monte Union High School District and Mountain View School District. A Due Process Hearing Request is called a complaint. The Office of Administrative Hearings is referred to as OAH. On December 18, 2023, El Monte Union timely filed a Notice of Insufficiency as to the complaint.

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.)

Student's complaint alleges eight insufficiently pled claims against El Monte Union. El Monte Union asserts that Student is currently enrolled at El Monte Union for the 2023-2024 school year, but was enrolled in Mountain View from October 2021, through June 2023. El Monte Union argues the complaint fails to allege facts that El Monte Union was responsible for serving Student from October 2021, through June 2023.

The complaint names El Monte Union and Mountain View, referred to as EMUHSD/District in the complaint. The complaint does not describe when El Monte Union became responsible for serving Student, only that Student is currently enrolled in El Monte Union. The factual allegations refer to District and do not specify which school district committed the alleged violations.

Issue 1 of the complaint claims the District failed to conduct a functional behavior assessment. Issue 1 is insufficient as to El Monte Union because the complaint fails to allege facts about Student's behaviors at El Monte Union and why El Monte Union should have conducted a functional behavior assessment as a result. The complaint fails to allege facts about El Monte Union's obligation to conduct a functional behavior assessment to provide El Monte Union with an awareness and understanding of the problem. The complaint fails to provide a sufficient description of El Monte Union's alleged failure to conduct a functional behavior assessment to allow El Monte Union to

prepare for the hearing and to participate in a resolution session. Accordingly, Issue 1 is insufficient as to El Monte Union.

Issue 2 of the complaint is also insufficiently plead as to El Monte Union. Issue 2 contends District failed to offer a one-to-one aide in the March 18, 2022, and March 13, 2023 individualized education programs. An individualized education program is called an IEP.

The complaint fails to allege sufficient facts against El Monte Union regarding the alleged failure to offer Student a one-to-one aide in the March 18, 2022, and March 13, 2023 IEPs. According to the pleadings, Student was not enrolled in El Monte Union when the March 18, 2022, and March 13, 2023 IEPs were developed and offered to Student.

Issue 2 fails to provide El Monte Union with an awareness and understanding of the problem alleged against El Monte Union for failing to offer a one-to-one aide in the March 18, 2022, and March 13, 2023 IEPs. The complaint does not provide El Monte Union sufficient information to prepare for hearing to defend against the alleged failure. Accordingly, Issue 2 is insufficient as to El Monte Union.

Issue 3 is also insufficiently plead against El Monte Union. Issue 3 claims District failed to offer Student placement in a nonpublic school in the March 18, 2022 IEP. The complaint fails to allege sufficient facts about El Monte Union's obligation to offer Student an IEP placement in 2022. The complaint fails to provide El Monte Union with an awareness and understanding of El Monte Union's alleged failure to offer a nonpublic school placement in the March 18, 2022 IEP, to allow El Monte Union to prepare for hearing to defend Student's claim in Issue 3. Accordingly, Issue 3 is insufficient as to El Monte Union.

Issue 4 is insufficiently plead against El Monte Union. Issue 4 contends District failed to refer Student for an educationally related intensive counseling services assessment pursuant to the March 18, 2022 IEP. However, the pleadings establish El Monte Union was not responsible for serving Student in 2022. The complaint fails to allege sufficient facts about El Monte Union's obligation to refer Student for an educationally related intensive counseling services assessment pursuant to the March 18, 2022 IEP. As a result, the complaint fails to provide El Monte Union with an awareness and understanding of the problem against El Monte Union. Accordingly, Issue 4 is insufficient as to El Monte Union.

Issue 5 is insufficiently plead against El Monte Union. Issue 5 contends the March 18, 2022 psychoeducation assessment conducted by District was not comprehensive. Based on the pleadings, the March 18, 2022 psychoeducation assessment was completed prior to Student's enrollment in El Monte Union. The complaint fails to allege sufficient facts about El Monte Union's role in the March 18, 2022 psychoeducational assessment, to provide El Monte Union with an awareness and understanding of the problem against El Monte Union. Accordingly, Issue 5 is insufficient as to El Monte Union.

Issues 6, 7, and 8 are insufficiently plead against El Monte Union. Issue 6 contends the IEP dated October 13, 2021, as amended on December 14, 2021, denied Student a free appropriate public education, called a FAPE. Issue 7 contends the March 18, 2022, IEP denied Student a FAPE. Issue 8 contends the March 13, 2023, IEP denied Student a FAPE.

However, the complaint fails to allege facts about El Monte Union's responsibilities to Student in the IEPs dated October 13, 2021, as amended on December 14, 2021, March 18, 2022, and March 13, 2023. The complaint fails to provide

El Monte Union with an awareness and understanding of the problems in Issues 6, 7, and 8 as it relates to El Monte Union's alleged violations regarding the program offers made in the IEPs dated October 13, 2021 IEP, as amended on December 14, 2021, March 18, 2022, and March 13, 2023. Accordingly, Issues 6, 7, and 8 are insufficient as to El Monte Union.

ORDER

1. Issues 1 through 8 of Student's complaint are insufficiently pled against El Monte Union under title 20 United States Code section 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 United States Code section 1415(b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this Order. 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, El Monte Union shall be dismissed as a party, and the hearing shall proceed only against Mountain View.

IT IS SO ORDERED

Rommel P. Cruz

Rommel P. Cruz

Administrative Law Judge

Office of Administrative Hearings