BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

OAKLAND UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021010788

# ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

FEBRUARY 12, 2021

On January 27, 2021, Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Oakland Unified School District as respondent. On February 10, 2021, Oakland filed a Notice of Insufficiency and an Amended 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

### DESCRIPTION OF THE PROBLEM AND SUPPORTING FACTS

Student's complaint alleges that Oakland's 2018 triennial evaluation and January 2019 evaluation of Student are not legally compliant. Student supports this claim by describing how Oakland's psychoeducational assessor allegedly omitted or altered pertinent background information in conducting the psychoeducational assessments of Student. Student also disagrees with the assessments' conclusions that Student does not qualify for the special education eligibility category of Autism Spectrum Disorder.

Oakland should have information on what psychoeducational assessments it performed on Student and what information the assessor used in conducting the assessments, and is on notice of what Student believes the assessor should have relied on in performing the assessments. Student's complaint identifies the issues and adequate facts about the problem to permit Oakland to respond and participate in a resolution session and mediation.

### PROPOSED RESOLUTION

Student requests that Oakland perform a new triennial evaluation. 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 sufficiently defined and Student has met the statutorily required standard regarding proposed resolutions.

### OTHER PROPOSED RESOLUTIONS

Student also seeks removal of the entire 2018 triennial evaluation from Student's file, including psychoeducational, speech language and occupational therapy portions.

The procedure for the destruction, removal or amendment of educational records is governed by Ed. Code § 49070. Whether a judge could order destruction, removal or amendment of records is a fact-based determination that could not be made before hearing. Further, Student seeks monetary damages from Oakland. An administrative law judge does not have the ability to award monetary damages under the IDEA.

Student's complaint does not fail for insufficiency by including any additional proposed resolution outside the jurisdiction of OAH. While such issues may be the subject of a motion to dismiss, they are outside of the scope of the current order. Similarly, whether Student raises issues outside of the two-year statute of limitations for special education cases is outside the scope of this order.

## 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.

## IT IS SO ORDERED.

Claire Yazigi
Claire Yazigi (Feb 12, 2021 10:44 PST)

Claire Yazigi
Administrative Law Judge
Office of Administrative Hearings