BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

NEW JERUSALEM ELEMENTARY SCHOOL DISTRICT AND ABLE CHARTER SCHOOL.

OAH CASE NUMBER 2023070457

ORDER FINDING NON-EXPEDITED ISSUES SUFFICIENTLY PLEAD AGAINST NEW JERUSALEM ELEMENTARY SCHOOL DISTRICT

JULY 31, 2023

On July 14, 2023, Parent on behalf of Student filed a due process hearing request, called a complaint, with the Office of Administrative Hearings, naming New Jerusalem Elementary School District and Able Charter School. The Office of Administrative Hearings is called OAH. New Jerusalem Elementary School District is called New Jerusalem.

On July 28, 2023, New Jerusalem filed a notice of insufficiency as to the non-expedited claims alleged against it in the complaint. No opposition was received from Student.

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, called a FAPE; (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, and 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 Fed. Reg. 46,540-46541, 46699.)

Here, Student alleges that he attended New Jerusalem for the first semester of the 2021-2022 school year, and that New Jerusalem committed procedural and substantive violations of the Individuals with Disabilities Education Act (20 U.S.C. § 1400, et seq.) that denied Student a FAPE. New Jerusalem contends that Student's complaint is vague and confusing because it alleges incorrect facts and does not provide sufficient detail.

The facts alleged in Student's complaint are sufficient. Student's complaint identifies the issues and adequate facts about the problems to permit New Jerusalem to respond and participate in a resolution session and mediation. OAH does not have a summary judgment motion procedure and does not decide through a notice of insufficiency whether the allegations contained in the due process complaint are accurate or not.

At Issue 1a, subparts A and B, Student alleges he was denied a FAPE because New Jerusalem failed to offer Student behavior intervention services or a behavior intervention plan although it was aware Student had behaviors that interfered with his learning as reported by assessments and Parent. Student also alleges his fine motor skills were slightly below average and he could not write his name, and New Jerusalem denied him a FAPE by not offering occupational therapy to address Student's fine motor skill deficits. These facts are sufficient to state a claim.

At Issue 1b, Student alleges New Jerusalem failed to offer him any accommodations to address his phonological delays and cites examples of necessary accommodations. These facts are sufficient to state a claim.

At Issue 1c, Student alleges he required, but was not offered, a one-to-one aide to address his need for redirection and his challenging behaviors. These facts are sufficient to state a claim.

At Issue 1d, Student alleges assessments and Parent reported behaviors that interfered with Student's learning, and he was denied a FAPE because New Jerusalem did not conduct a functional behavior assessment to determine the extent of Student's behavioral needs and appropriately address them. These facts sufficiently state a claim.

At Issue 1e, Student alleges New Jerusalem denied him a FAPE by failing to include autism as a secondary eligibility category on his individualized education programs, called IEPs, dated August 27, 2021, and March 8, 2022, although it was on notice that Student displayed characteristics of autism detailed in the complaint. These facts are sufficient to state a claim.

At issue 1f, Student alleges New Jerusalem failed to include adequate goals in the August 27, 2021 IEP to address Student's areas of need in articulation, behavior, fine motor skills, and academics. These facts are sufficient to state a claim.

At Issue 1g, Student alleges New Jerusalem was on notice that Student was prone to regression but failed to assess Student's regression or address it in the March 8, 2022 IEP. These facts are sufficient to state a claim.

At Issue 1h, Student alleges New Jerusalem denied him a FAPE by not offering him extended school year at the end of the 2021-2022 school year, even though Student was prone to regression. These facts are sufficient to state a claim.

At Issue 1i, Student alleges New Jerusalem denied Student a FAPE by failing to offer him in-home applied behavior analysis therapy and clinic meetings, although

scientific literature allegedly indicated this was a necessary support for students with disabilities such as Student. These facts are sufficient to state a claim.

At Issue 1j, Student alleges New Jerusalem denied Student a FAPE by failing to offer Parents training in speech and language impairment and behavior so that Parents could support Student at home. These facts are sufficient to state a claim.

At Issue 1k, Student alleges New Jerusalem denied him a FAPE by offering him placement in a special day class for students with disabilities for the majority of the school day and failed to offer him placement with neurotypical peers to the maximum extent possible. These facts are sufficient to state a claim.

Issue 1l alleges New Jerusalem denied Student a FAPE by offering predetermined IEPs at the IEP team meetings of August 27, 2021, and March 8, 2022, because mandatory members were missing from the meetings, Parent's concerns were disregarded, and parts of the August 17, 2022 IEP were not completed. These facts are sufficient to state a claim.

Therefore, Student's statement of Issues 1a through 1l against New Jerusalem are sufficient.

New Jerusalem challenges Student's non-expedited resolutions as insufficiently detailed, seeking an order that Student be awarded appropriate programs and services, necessary accommodations, updated goals, and a monetary fund for compensatory education. 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).) When read as a whole with the non-expedited allegations in the complaint, the non-expedited proposed resolutions are well-defined, and Student has met the statutorily required standard regarding proposed resolutions.

ORDER

1. The non-expedited claims 1a through 1l of Student's complaint as alleged against New Jerusalem Elementary School District are sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. The non-expedited prehearing conference and hearing dates in this matter are confirmed.

Alexa Hohensee

Alexa Hohensee
Administrative Law Judge
Office of Administrative Hearings