BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ALUM ROCK UNION ELEMENTARY SCHOOL DISTRICT.	OAH Case No. 2019040437 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On April 9, 2019, Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming Alum Rock Union Elementary School District. On April 16, 2019, Alum Rock filed a Notice of Insufficiency as to Student's complaint.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint. (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).

The complaint is deemed sufficient unless a party notifies the Office of Administrative Hearings and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements. (20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).)

A complaint is sufficient if it contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem 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

[1] A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 U.S.C. section 1415(b)(7)(A).

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

Alum Rock timely filed its notice of insufficiency and challenges Issue 2 on the grounds that Student failed to specifically identify the time frames at issue including the dates of allegedly deficient individualized education programs. The facts alleged in Student's complaint are sufficient to put Alum Rock on notice of the issues forming the basis of the complaint.

Student's complaint details that Alum Rock found her eligible for special education pursuant to the category of speech and language impairment at her initial individualized education program team meeting on February 22, 2016. She was subsequently diagnosed with autism spectrum disorder, and Alum Rock conducted additional assessments, convened an IEP team meeting in June 2016, and Student's IEP team determined she met the eligibility criteria for autism. Student left Alum Rock and enrolled in a charter school. She returned to Alum Rock for first grade, the 2018-2019 school year, and Alum Rock convened a 30-day IEP team meeting on August 24, 2018. Student's complaint alleges she struggles with school anxiety and attendance; displays communication and behavioral challenges indicative of a mental health disorder; and is not meeting grade level standards. Alum Rock conducted further assessments pursuant to an October 2018 assessment plan. Student details her concerns with Alum's assessments. At IEP team meetings in December 2018 and February 2019 Alum Rock recommended that Student be exited from special education.

Student's complaint identifies two issues for hearing, namely, whether Alum Rock denied her a FAPE by failing to timely and comprehensively assess her in all suspected areas of disability and by failing to tailor appropriate goals, services and educational programs to meet her needs. In her assessment claim, Issue 1, Student alleges Alum Rock should have offered an educationally related mental health services evaluation and functional behavior

assessment and specifies why she believes its psycho-educational and speech and language assessments were legally deficient. This issue is sufficiently pled.

In Issue Two, Student alleges, in summary, that Alum Rock failed to provide a program that included sufficient behavior support and mental health services, and should have qualified her for special education pursuant to the categories of emotional disturbance or other health impairment. This issue is sufficiently pled. The law does not require Student to specifically identify the date of each IEP at issue and otherwise define the statutory period. That Student may have asserted claims during a period of time when she was not enrolled in Alum Rock or that may extend beyond the two-year statute of limitations does not render her complaint insufficient. Student's complaint identifies the issues and adequate related facts about the problem to permit Alum Rock to respond to the complaint and participate in a resolution session and mediation, if requested, and to prepare for a due process hearing. Therefore, Student's statement of claims is sufficient.

Student's proposed resolutions request a finding of eligibility under the category of other health impairment or emotional disturbance; compensatory education including behavior support, mental health services and academic tutoring; independent psychoeducational, speech and language, functional behavior, and educationally related mental health evaluations; home-based behavior and mental health services; reimbursement for all educationally related expenses within the statutory period; and attorney fees. 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).) Student has met the statutorily required standard of stating a resolution to the extent known and available to her at the time.

ORDER

1. The complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).

2. All dates in this matter are confirmed.

DATE: April 17, 2019

DocuSigned by:
Theresa Ravandi
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THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings