BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2019120128

ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On December 2, 2019, Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Santa Monica Malibu Unified School District. On December 12, 2019, Santa Monica Malibu 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 alleges four claims in the complaint, only one of which is sufficient. The issues are discussed below.

Issue 3 is sufficiently pled to put Santa Monica Malibu on notice as to the basis of Student's claims. Student alleges she is currently in a kindergarten class at Grant Elementary School. Issue 3 alleges that the placement is not the least restrictive environment because it is a special day class where Student is higher functioning than her classmates. Issue 3 provides an awareness and understanding of the issues forming the basis of the complaint.

Issues 1, 2 and 4 are not sufficiently pled. The background facts state that Student's initial individualized education program, called an IEP, was dated May 30, 2017. In May of 2017 she began to matriculate for summer school at Will Rogers Elementary School. During the 2019-2020 school year, Student's mother "discover[ed] that [Student] was not safe at that school as a result [of] a particular teacher's misconduct." Therefore, Student started the spring semester of the 2019-2020 school year at a different school, Grant Elementary.

Issue 1 goes on to allege that "the IEP" offered insufficient related services. However, it does not state which IEP it is referring to, whether that be the initial May 2017 IEP or a later IEP. Because the May 2017 IEP governed summer 2017 and, by inference, the remainder of the 2017-2018 school year, and no other IEP is mentioned, it is not clear what school year, or years, or IEP or IEPs, are at issue in Issue 1. For that reason, Issue 1 does not provide an awareness and understanding of the issues forming the basis of the complaint. For similar reasons, Issue 4 is not sufficiently pled. It states that Student was denied a FAPE for all times since December 1, 2017 when the District offered and provided "the educational program as delineated above." Since at least three school years and two school placements were delineated above, Issue 4 does not provide an awareness and understanding of the issues forming the basis of the complaint.

Issue 2 is not sufficiently pled. It states that "the conduct of her teacher" caused Student emotional distress. It is not stated, even in general terms, what was the nature of the misconduct being alleged, when it occurred or in what grade or classroom. For that reason, Issue 2 does not provide an awareness and understanding of the issues forming the basis of the complaint.

ORDER

1. Issue Number 3 is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. Issues Number 1, 2 and 4 are insufficiently pled under title 20 United States Code section 1415(c)(2)(D).
3. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).
4. 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. The filing of an amended complaint will restart the applicable timelines for a due process hearing.
5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issue Number 3.

IT IS SO ORDERED.

DATED: December 13, 2019

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June Lehrman
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June Lehrman
Administrative Law Judge
Office of Administrative Hearings