BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. PANAMA-BUENA VISTA UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018120461 ORDER DETERMINING AMENDED COMPLAINT SUFFICIENT

On December 13, 2018, Parent on behalf of Student filed a Due Process Hearing Request[1] with the Office of Administrative Hearings naming Panama-Buena Vista Unified School District. On January 3, 2019, Student timely filed a "Revised Request for Due Process" (amended complaint) in response to an Order issued by OAH on December 27, 2018, finding the original complaint insufficient and granting Student leave to amend the complaint. On January 18, 2019, Panama-Buena Vista timely filed a Notice of Insufficiency as to Student's amended 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).

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 mediation. (See H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.)

[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).

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's amended complaint generally alleges that in October 2016, Parent informed Panama-Buena Vista that Student had a learning disability due to cognitive difficulties that impeded her education. School records for the 2016-2017 school year reflected Student was a slow starter, easily distracted, and worked slowly. Panama Buena Vista did not assess Student for eligibility for special education. Parent made Panama Buena Vista aware in April 2017 that Student was receiving therapy for anxiety, behavioral concerns regarding school, low self-esteem, and coping skills. After assessing Student at Parents' request, Panama Buena Vista held an IEP team meeting in November 2018, where Panama Buena Vista presented assessment results for Student, and found her ineligible for special education. Student alleges the evaluation was not comprehensive and did not include a functional behavioral assessment. Student also alleges Panama Buena Vista predetermined her eligibility by contacting Parents after the IEP meeting, and offered Student eligibility under "speech" without holding an IEP meeting.

The amended complaint alleges nine issues. The issues include whether, within the statutory period, Buena Vista denied Student a free appropriate public education by failing to: 1) timely and appropriately assess Student in all areas of suspected need; 2) comply with its Child Find mandate; 3) offer Student an appropriate individualized education plan; 4) offer Student an IEP that conformed to the requirements to the IDEA by addressing her unique needs;) 5) advise Parents of the available placement and service options: 6) provide Parents with prior written notice when refusing requests for assistance, independent study, evaluations, and or homebound instruction; 7) offer Student an IEP: 8) offer or provide Student appropriate accommodations, supplementary aids and services, and related services; and 9) offer or provide Student with specialized academic instruction to allow her to make progress toward or meet her IEP goals.

Each enumerated issue is followed by additional factual allegations. The amended complaint continues to list proposed resolutions, including compensatory education,

therapeutic counseling, reimbursement for educationally related expenses, specialized instruction, accommodations and services, and staff training.

The facts alleged in Student's amended complaint are sufficient to put Panama Buena Vista on notice of the issues forming the basis of the complaint. The amended complaint identifies each of the issues and enough related facts pertaining to each issue, including applicable time frames, to permit Panama Buena Vista to respond to the complaint and participate in a resolution session and mediation. Student's proposed resolutions meet the statutorily required standard of stating a resolution to the extent known and available to Student at the time.

Therefore, Student's amended complaint is sufficient.

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.

DATE: January 22, 2019

DocuSigned by:
Adrienne L. Krikorian
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ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings