BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

ELK GROVE UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023070450

ORDER FINDING DUE PROCESS COMPLAINT SUFFICIENTLY PLED

AUGUST 3, 2023

On July 17, 2023, Parents on behalf of Student filed a due process hearing request, called a complaint, with the Office of Administrative Hearings, referred to as OAH. It named Elk Grove Unified School District, called Elk Grove. On August 1, 2023, Elk Grove timely filed a notice of insufficiency as to 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:

- 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,
- includes facts about the problem, and
- 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 he attended Elk Grove for the 2021-2022, and 2022-2023 school years. He also alleges Elk Grove committed procedural and substantive violations of the Individuals with Disabilities Education Act (20 U.S.C. § 1400, et seq.) that

denied Student a FAPE. Elk Grove contends Student's complaint is vague and confusing because it alleges insufficient detail, references irrelevant law, lacks evidence in support of each claim, and fails to expressly identify a causal connection between the alleged district actions or inactions and any harm to Student or Parents.

The facts alleged in Student's complaint are sufficient. Student's complaint identifies the issues and adequate facts about the problems to permit Elk Grove to respond and participate in a resolution session and mediation. Whether Student's claims are supported by the law, and whether Student has any evidence to connect Elk Grove's conduct to a harm under the IDEA, is a matter for hearing and not decided in response to a notice of insufficiency.

At Issue 1a, subpart A, Student alleges Elk Grove denied him a FAPE by not offering occupational therapy in the December 10, 2021 individualized education program, or IEP, although writing was an area of educational need. He alleges Elk Grove was aware of his difficulty with writing, including poor letter formation and placement, but failed to address these fine motor deficits. These facts are sufficient to state a claim.

At Issue 1b, Student alleges Elk Grove denied him a FAPE by not offering him extended school year in summer 2022, even though Student was behind in academics and had regressed in behavior. These facts are sufficient to state a claim.

At Issue 1c, Student alleges Elk Grove denied Student a FAPE by failing to offer him in-home applied behavior analysis therapy and clinic meetings for the 2021-2022 school year, although scientific literature allegedly indicated this was a necessary support for students with Student's disability. These facts are sufficient to state a claim.

At Issue 1d, Student alleges Elk Grove denied Student a FAPE during the 2021-2022 school year by failing to offer Parents training in autism spectrum disorder,

expressive and receptive communication skills, and behavior so that Parents could support Student at home. These facts are sufficient to state a claim.

At Issue 1e, subparts 1 and 2, Student alleges Elk Grove denied Student a FAPE by offering a predetermined IEP at the December 10, 2021 IEP team meeting. It did this by failing to honor Parent's request for home-based applied behavior services in the form of behavior therapy and clinical meetings, failing to have a general education teacher at the meeting, and failing to complete the IEP documentation. These facts are sufficient to state a claim.

At Issue 2a, subpart A, Student alleges Elk Grove denied him a FAPE by not offering occupational therapy in the December 10, 2022, or January 25, 2023 IEPs. He alleges that Elk Grove was aware of Student's difficulties with writing, including poor letter formation and placement, continued into the 2022-2023 school year, but failed to address his fine motor deficits. In addition, Student alleges he obtained very low written expression scores in assessments prior to the January 25, 203 IEP team meeting, signaling a need for occupational therapy. These facts are sufficient to state a claim.

At Issue 2b, Student alleges Elk Grove denied him a FAPE by not assessing Student's fine motor and visual skills for the December 10, 2022 IEP team meeting, although those were areas of suspected disability. Student alleges the assessment plan indicated a motor development assessment would be done by an occupational therapist, but no occupational therapist attended the December 10, 2022, or January 25, 2023 IEP team meetings, to report on Student's occupational therapy needs. These facts are sufficient to state a claim.

At Issue 2c, Student alleges Elk Grove denied him a FAPE by failing to offer him extended school year by the end of the 2022-2023 school year, although it was aware

Student needed extended school year services because he was behind in academics and had regressed in behavior. These facts are sufficient to state a claim.

At Issue 2d, Student alleges Elk Grove denied Student a FAPE by failing to offer him in-home applied behavior analysis therapy and clinic meetings for the 2022-2023 school year, although scientific literature allegedly indicated this was a necessary support for students with disabilities such as Student. Student alleges that in-home services were needed to address his history of truancies, including 40 truancies during the 2022-2023 school year. These facts are sufficient to state a claim.

At Issue 2e, Student alleges Elk Grove denied Student a FAPE during the 2022-2023 school year, by failing to offer Parents training in autism spectrum disorder, expressive and receptive communication skills, and behavior so that Parents could support Student at home. These facts are sufficient to state a claim.

At Issue 2f, Student alleges Elk Grove denied him a FAPE in the December 10, 2022 IEP, by offering him placement in a class for students with disabilities for the majority of the school day and failing to offer placement with neurotypical peers to the maximum extent possible. Student alleges he can access instruction in a general education classroom with one-to-one aide support and multi-tiered teaching strategies, which should have been offered. These facts are sufficient to state a claim.

At Issue 2g, subpart 1, Student alleges Elk Grove denied him a FAPE by not allowing Parent to meaningfully participate in the December 10, 2022 IEP team meeting, and which Student alleges was predetermined. Student also alleges Elk Grove denied Parent meaningful participation by failing to give her a complete December 10, 2022 IEP document. These facts are sufficient to state a claim.

Therefore, Student's statement of Issues 1a through 1e, and 2a through 2g, including subparts, are sufficient.

Elk Grove challenges Student's proposed resolutions as not sufficiently related to the claims and seeking a monetary fund for compensatory education without explaining how the amounts were calculated. 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 allegations in the complaint, the proposed resolutions are sufficiently well-defined, and Student has met the statutorily required standard regarding proposed resolutions.

ORDER

1. All of the issues alleged in Student's complaint, including subparts, are sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. The prehearing conference and hearing dates in this matter are confirmed.

Alexa Hohensee

Alexa Hohensee
Administrative Law Judge
Office of Administrative Hearings