BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

LAKE TAHOE UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023060879

ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

JULY 12, 2023

On June 23, 2023, Student filed a due process hearing request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Lake Tahoe Unified School District. On July 7, 2023, Lake Tahoe timely filed a Notice of Insufficiency as to the complaint.

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.)

The facts alleged in Student's complaint are sufficient. Student's complaint identifies the issues and adequate facts about the problem to permit Lake Tahoe to respond and participate in a resolution session and mediation.

Student's complaint stated 13 issues. Although Student identifies the issues as 1 (A) through (M), numbers have been used her for clarity. Lake Tahoe filed a response to Student's complaint on June 30, 2023, denying the allegations of each Issue. Lake Tahoe, in its response, disputed the adequacy of allegations as to Issue 3 and 7. Lake Tahoe provided a response to each of the remaining issues, demonstrating that those issues provided an awareness and understanding of the issues forming the basis of the complaint and identified adequate facts about the problem.

Student's complaint describes the problems relating to the proposed changes regarding Student's identification, evaluation, or educational placement, and the provision of a free appropriate public education, or a FAPE, to Student and included facts about the problems and proposed resolutions. Student provided approximately four pages of allegations describing Parent's attempts to obtain evaluations for special education eligibility and supports and services since February 2021. Student alleges having individualized education program, or IEP, team meetings on June 9, 2021 and March 2023. Student sets forth additional factual allegations after stating each issue in the complaint.

In Issue 3, Student alleges Lake Tahoe filed to provide prior written notice regarding its refusal to initiate a Parent requested evaluation of Student's suspected disability. The allegations that follow describe Parent's repeated requests for assessments in academics and speech and language and alleges Lake Tahoe provided no response.

Lake Tahoe argues the allegations lack specific information regarding the date and manner of Parent's requests and of Lake Tahoe's responses. Lake Tahoe relies on prior OAH orders in support of its contention that a complaint is not sufficient unless it

states the who, what, when, where, and how that pertain to each issue. Prior OAH orders do not constitute binding precedent. (See, Gov. Code, § 11425.60.)

Here, Student put Lake Tahoe on notice that Issue 3 regards requests for assessments in academics and speech and language. The complaint puts Lake Tahoe on notice that all Issues span the time period of 2020 through 2023. Student alleges, under Issue 1, that Lake Tahoe made false representations regarding their obligation to assess Student and Parent did not receive required information, such that the statute of limitations, "should be extended beyond two years."

Notice pleading requirements do not mandate that Student identify when each request was made, to whom, and in what manner. Though it may be better practice to do so, Student stated the issue with enough information for Lake Tahoe to prepare a response and participate in mediation. Student pled Issue 3 sufficiently so as to provide an awareness and understanding of the basis of the complaint.

In Issue 7, Student alleges Lake Tahoe failed to offer Student's records, including those related to academics, functional, and behavior issues, academic progress, and IEP's within 5 days of such requests. Lake Tahoe makes the same arguments as it did in relation to Issue 3, that Student's complaint provided no facts regarding the who, what, how, and when Parent made each record request. For the same reasons as stated above, Lake Tahoe's argument fails. Student's allegations provide enough information for Lake Tahoe to review records logs, telephone logs, emails, and other internal documentation for the time period in question to determine whether they have a record of Parent requesting records and whether Lake Tahoe fulfilled any such requests. Student allegations in Issue 7 provide Lake Tahoe with an awareness and understanding of the basis of Issue 7. Accordingly, Student pled Issue 7 sufficiently.

Therefore, Student's statement of the 13 claims is sufficient. Based upon the foregoing, OAH orders as follows:

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.

IT IS SO ORDERED.

Cole Dalton

Cole Dalton
Administrative Law Judge
Office of Administrative Hearings