BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2018090389
v.	ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT
SALINAS UNION HIGH SCHOOL DISTRICT.	

On September 12, 2018, Student filed a due process hearing request][1] (complaint) with the Office of Administrative Hearings naming Salinas Union High School District. On September 27, 2018, Salinas 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).

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.)

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

[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).

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 complaint is succinct, but the facts alleged in his complaint are sufficient to put Salinas on notice of the issues forming the basis of the complaint. Student alleges that Salinas failed to timely provide an assessment plan, conduct a timely assessment, and thus denied him a free appropriate public education because it did not develop an individualized education program with goals and accommodations, and an offer of placement and services. Student alleges that only after he began attending school in a different school district was he assessed, and then found eligible for special education under the eligibility categories of specific learning disability, and other health impairment.

In its notice of insufficiency Salinas argues that the complaint is insufficient for nine different reasons. The first reason is related to Paragraph 11 of the complaint which states, "The Student Notes from the District indicated that [Student] was being bullied in school, was suffering [f]rom a medical condition and was depressed." Salinas argues the complaint should be found insufficient because Student does not provide a time period or the specifics of the bullying. However, there is no issue in the complaint that Student was denied a FAPE because he was bullied. This information is provided in the complaint as one of several examples of reasons why Student believes Salinas should have assessed him. The same is true of Salinas's second claim of insufficiency which is that Student does not describe how the "medical condition" should have put Salinas on notice about a child find violation. Medical conditions may be of a nature that they might have put Salinas on notice of a child find violation, but specifics about the medical condition are not necessary at this stage of the proceedings. In regards to Salinas's claim that they do not know when Student was bullied or had the medical condition, this claim fails because it is clear that paragraph 11 refers to events during the 2016-2017 school year. This is because, after the first two paragraphs which establish OAH's jurisdiction, the complaint states facts in chronological order.

Salinas's third reason as to why OAH should find the complaint insufficient relates to Student's statement in paragraph 9 of the complaint that "By the beginning of the 2016-2017 school year the District should have conducted a special education evaluation and offered Student an IEP . . . ." Salinas argues that Student's complaint was filed on September 12, 2018, but contains no facts supporting an extension of the two-year statute of limitations for

filing a due process complaint. However, it does not appear that Student is asking for the statute of limitations to be extended. Rather, Student is emphasizing his belief that Salinas should have assessed him and offered him an IEP well before the beginning of the 2016-2017 school year, and nothing more.

Salinas, as its fourth reason for finding the complaint insufficient, claims that it does not understand why Student claims he was denied a FAPE from during the 2016-2017 school year through January 12, 2018, since Student left Salinas at the end of the 2016-2017 school year. Further, Salinas argues that the complaint is insufficient because it does not identify when Student was found eligible for special education in his new school district. Again, failure to include this information in the complaint does not render it insufficient.

Salinas's fifth argument for a finding of insufficiency is the statement that Student "had deficits in all academic areas, attention, executive functioning and social/emotional functioning," in paragraph 2 of the complaint. This paragraph follows the first paragraph which tells where Student now goes to school, and the eligibility categories under which he is qualified for special education. According to Salinas, use of the past tense, i.e. "had deficits," requires Student to state which deficits he no longer has. However, use of the past tense may merely be a typographical error, or a grammatical error. This does not render the complaint insufficient.

Salinas's sixth ground for finding insufficiency is the statement in paragraph 8 that Student "received mostly passing grades in seventh and eighth grades . . . ."[2] According to Salinas this statement contradicts Student's claim that Salinas was put on notice when he entered ninth grade for the 2016-2017 school year that he should be assessed for special education. In quoting this partial sentence, Salinas ignores the remainder of the sentence and the rest of the paragraph that claims he was placed in classes with specialized academic instruction, and that he "remained at a third grade level in reading, written language and math." Thus, this argument for a finding of insufficiency fails.

Salinas's seventh ground for insufficiency is the statement in paragraph 10 that Student "received Ds and Fs in all of his academic classes." Again, as was the case with Salinas's second reason as to why OAH should find the complaint insufficient is the fact that Student states the facts in chronological order in the complaint, following the first two paragraphs. Thus it is clear, when reading the entire complaint, that Student received these grades during the 2016-2017 school year that is at issue.

Salinas's eighth ground for an insufficiency finding relates back to his sixth ground relating to paragraph 8. Salinas argues that the complaint does not state facts to support Student's claim that he received specialized academic instruction in the seventh and eighth grades. However, the pleading standards for special education due process complaints does

[2] Although the school district is named "Salinas Joint Union High School District," it also has at least one middle school which Student attended for seventh and eighth grades, the 2014-2015 and 2015-2016 school years.

not require these specific facts for the complaint to be found sufficient, and since the middle school Student attended these school years was a Salinas middle school, there should be no reason to provide this specific information.

Salinas's ninth and last ground to support insufficiency relates to the proposed resolutions in the complaint. Salinas claims it "cannot make sense" of the proposed resolution of compensatory education without information and specifics as to the contents of Student's IEP that would support this relief. 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).) It is not necessary for Student to provide the details sought by Salinas to render the complaint sufficient. The burden of providing evidence of a need for compensatory education, as well as the type, frequency and duration is Student's, and this will need to be done at hearing if the requested relief is to be awarded.

Salinas's claims that the complaint is insufficiently pled lack merit. Accordingly, it is found that the complaint is sufficiently pled.

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: October 1, 2018

DocuSigned by:
Rebecca Freie
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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings