BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2018030111
v.	ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT
ETIWANDA SCHOOL DISTRICT.	

On March 1, 2018, Parent on behalf of Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming Etiwanda School District as respondent. On March 2, 2018, Etiwanda School District 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 so long as the challenge is filed within 15 days of receiving 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

In this case, Mother, who is not represented by an attorney, has filed a request for a due process hearing. The request for due process:

- provides Student's identifying information;
- identifies the District against which claims are made;
- asserts a basis for jurisdiction; and
- provides facts indicating that termination of Student's placement in the EASE program is the source of the dispute. Those facts include:
    - that Student was properly enrolled in the EASE program (an online at-home school option) after securing an inter-district transfer;
    - that the time frame of the dispute is January 22, 2018, when Student alleges Etiwanda discontinued her online access to the full EASE program, forward.
    - that Student was not served with prior written notice of the planned termination of the program; and
    - that Etiwanda did not implement the program after it discontinued Student's online access and demanded return of Student's books.

Proposed resolutions are pled as required. The complaint argues that Student should be entitled to stay put. However, no motion for stay put with the required evidence attached has been filed, and the request is not addressed herein.

Etiwanda asserts that the complaint fails to clearly identify dates of alleged violations, fails to articulate the nature of the violation and does not explain how the facts constitute a denial of a free, appropriate public education. Etiwanda further asserts that Mother did not specifically allege Etiwanda denied Student a FAPE and did not allege that Student's IEP placed her in the EASE program. Additionally, Etiwanda asserts that Student has failed to meet her burden of establishing the placement in Student's last agreed and implemented IEP for purposes of stay put.

The facts alleged in Student's complaint are sufficient to put the District on notice of the issues forming the basis of the complaint. Student's complaint identifies the problems

and adequate related facts about the problem to permit District to respond to the complaint and participate in a resolution session and mediation. Therefore, Student's statement of claims that she failed to receive proper notice of change of placement; and that Etiwanda did not implement her educational placement are sufficient.

Etiwanda's assertions regarding the complaint's shortcomings are proof issues and potential defenses to the complaint. The one exception is the objection that the District is not able to "clearly" know the time frame involved which is overruled in light of the information pled in Student's request for due process. The time frame related to the discontinuation of services in the EASE program is stated with adequate clarity for Etiwanda to respond. Otherwise, Etiwanda's articulated concerns are not bases for determining the complaint is insufficient.

Etiwanda's concerns regarding Student's assertions regarding stay put are premature. The complaint is not judged by the same standards as a stay-put motion. Stay-put is a separate step in the hearing process.

District objects to Student's proposed resolution[s] including a proposal that Student remain in the EASE program pending the results of District assessments and independent educational assessments. Etiwanda argues that the resolutions are inadequate because Student does not identify the assessments to which she is referring. 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).) The proposed resolution stated in Student's complaint is not well-defined. However, Student has met the statutorily required standard of stating a resolution. Whether that resolution is ordered after hearing will depend on proof at the time of the hearing.

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: March 7, 2018

DocuSigned by:
Penelope S. Pahl
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PENELOPE S. PAHL
Administrative Law Judge
Office of Administrative Hearings