BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ELK GROVE UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018060563 ORDER DETERMINING COMPLAINT PARTIALLY SUFFICIENT

On June 13, 2018, Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming Elk Grove Unified School District. On June 20, 2018, 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. (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 alleges two claims, one of which is sufficient and one of which is insufficient. The issues are discussed below.

Issues One is sufficiently pled to put District on notice as to the basis of Student's claims. Student identifies the issue and adequate related facts about the problem to permit District to respond and participate in a resolution session and mediation. Although Student's first issue does not list the facts in detail, Student does identify the problems and proposed resolutions. Student's first claim alleges his placement is too restrictive and he has not been given a chance to participate in general education. Student's proposed resolution requests a general education class with a behavior aide. Student does not list a timeframe for the claim, but the complaint does list his grade level as kindergarten or first grade and alleges he has never been given the chance to participate in general education.

With regard to Issue Two, Student fails to allege any facts related to how his placement at a school other than his home school is a denial of FAPE. Student simply states he is not placed in his home school and his proposed resolution requests placement at his home school with the behavior aide requested in claim one. The only facts listed are that his Parents are forced to commute over 30 minutes. Therefore, Student has failed to state sufficient facts supporting this claim, and the claim is insufficient.

Student's proposed resolutions request placement in a general education setting at Sunrise Elementary with a one to one behavior aide. 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 well-defined.

ORDER

1. Issue One of Student's complaint is sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).

2. Issue Two of Student's complaint are insufficiently pled under title 20 United States Code section 1415(c)(2)(D).

3. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).[2]

4. The amended complaint shall comply with the requirements of title 20 U.S.C. section 1415(b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issue One in Student's complaint.

DATE: June 25, 2018

DocuSigned by:
Linda Johnson
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LINDA JOHNSON
Administrative Law Judge
Office of Administrative Hearings

[2] The filing of an amended complaint will restart the applicable timelines for a due process hearing.