BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENT ON BEHALF OF STUDENT,

and

RIVERBANK UNIFIED SCHOOL DISTRICT,

OAH CASE NUMBER 2022050375

OAH CASE NUMBER 2022050090

ORDER DETERMINING INSUFFICIENCY OF STUDENT'S DUE PROCESS COMPLAINT

MAY 25, 2022

On May 9, 2022, Parent, on behalf of Student, filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Riverbank Unified School District. This case was consolidated on May 17, 2022, with a previously filed complaint by Riverbank naming Student as respondent. On May 25, 2022, Riverbank filed a Notice of Insufficiency as to the complaint.

APPLICABLE LAW

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).

MOTION TIMLINESS

The complaint is deemed sufficient unless a party notifies OAH and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements. (20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).) Here, Riverbank acknowledges receipt of the complaint on May 9, 2022. The Notice of Insufficiency was filed on May 25, 2022. However, the fifteenth day fell on a Sunday, resulting in the May 25, 2022, filing being timely. (Cal. Code Regs., tit.1 § 1004(c).)

COMPLAINT SUFFICIENCY

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.] 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 46541, 46699.)

Student's complaint alleges three insufficiently pled claims, and thereby fails to provide Riverbank with the required problem description and the facts relating to the problem to enable it to prepare for resolution, mediation and hearing. Initially, the pleading is confusing in that three "proposed issues" are stated at the outset of the complaint. However, the "problems and proposed solutions" section towards the end of the complaint, allege only the first of the three proposed issues.

Problem number one alleges the Riverbank failed to provide Student with an appropriate Individualized Education Program or IEP, and services at all times since March of 2020. However, the complaint pleads no facts prior to an IEP team meeting that occurred on March 23, 2021. As to the March 23, 2021, IEP, the facts do not identify what portions of the IEP were deficient. Additionally, Riverbank has no information allowing it to prepare to defend claims prior to March 23, 2021.

The second of the three "proposed issues" stated at the beginning of Student's complaint, asserts Student's entitlement to compensatory services for "failure to provide an appropriate program since May of 2020." No facts are stated indicating a basis for

compensatory services other than "due to the pandemic and the regression caused by it to Brian, he also requires additional assistance in all academic areas in the form of compensatory education" and that Riverbank "failed to provide Student the support he required over the last two years." No facts are stated describing Riverbank's "failure to provide an appropriate program since March of 2020." Riverbank is not able to prepare for mediation or hearing without facts describing the support Student required and was not provided.

The third of the three "proposed issues" stated at the beginning of Student's complaint, assert there were "procedural and substantive violations of the law that entitle Student and her *(sic)* family to appropriate relief including compensatory services and an on-going appropriate program." However, again, no facts allege procedural or substantive violations of the IDEA or California special education law.

ORDER

1. Student's complaint is insufficiently pled under section title 20 United States Code 1415(c)(2)(D).
2. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).
3. 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.

4. If Student fails to file a timely amended complaint, the complaint will be dismissed.
5. All dates previously set in this matter are vacated.

IT IS SO ORDERED.

Penelope S. Pahl

Penelope S. Pahl
Administrative Law Judge
Office of Administrative Hearings