BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

BERKELEY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023040649

ORDER DETERMINING THE AMENDED DUE PROCESS COMPLAINT IS SUFFICENT

JUNE 12, 2023

On April 19, 2023, 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 Berkeley Unified School District. On May 12, 2023, Berkeley filed a Notice of Insufficiency as to the complaint. On May 16, 2023, OAH deemed Student's complaint sufficient because Berkely's Notice of Insufficiency was not timely filed.

On May 22, 2023, Berkely filed a motion to dismiss based on Student's failure to serve it with a copy of the complaint. On May 26, 2023, OAH convened a prehearing conference. On May 26, 2023, Student served Berkely with the complaint and OAH deemed Student's amended complaint was filed on that date. OAH determined

Berkeley's motion to dismiss as moot because Student cured the deficiency. On June 9, 2023, Berkely filed a Notice of Insufficiency as to the amended 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).

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.)

DISCUSSION

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

Therefore, Student's statement of the one issue alleging Berkeley's non-compliance with the IDEA's child find mandate since 2015 is sufficient.

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. Student has met the statutorily required standard regarding proposed resolutions.

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.

IT IS SO ORDERED.

Marlo Nisperos

Marlo Nisperos
Administrative Law Judge
Office of Administrative Hearings