BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. FRESNO COUNTY DEPARTMENT OF SOCIAL SERVICES; FRESNO UNIFIED SCHOOL DISTRICT; FRESNO COUNTY OFFICE OF EDUCATION; SONOMA COUNTY OFFICE OF EDUCATION; ELK GROVE UNIFIED SCHOOL DISTRICT; KERN HIGH SCHOOL DISTRICT; NEVADA JOINT UNION HIGH SCHOOL DISTRICT; REDLANDS UNIFIED SCHOOL DISTRICT; CENTRAL UNIFIED SCHOOL DISTRICT; FRESNO COUNTY JUVENILE PROBATION; AND THE STATE OF CALIFORNIA.	OAH Case No. 2017070678 ORDER DENYING NOTICE OF INSUFFICIENCY AS TO ELK GROVE UNIFIED SCHOOL DISTRICT

On July 18, 2017, Student filed an amended due process hearing request (complaint) with the Office of Administrative Hearings naming multiple parties. The Office of Administrative Hearings granted leave to amend effective July 26, 2017. On August 10, 2017, Elk Grove Unified School District timely filed a Notice of Insufficiency as to Issue 4 of 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 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 identifies ten separate issues, each with multiple subparts. Each numbered issue identifies allegations against a specific responding party. Specifically, issues 4(a) through (k) are alleged against Elk Grove.

Student alleges Elk Grove denied Student a free appropriate public education "during the 2016-2017 (October 4, 2016 through November 7, 2016) school year," by: failing to offer an appropriate placement; failing to provide measurable goals in all areas of need; failing to consider a continuum of placement options; predetermining Student's individualized education program; failing to offer or provide appropriate behavior services; failing to provide appropriate behavior services; failing to offer an appropriate behavior intervention plan; failing to offer adequate counseling/mental health services; failing to make an interim placement offer; failing to find Student eligible under the category of emotional disturbance; and failing to offer an assessment plan when conditions warranted.

Paragraphs 75 through 79 address the time frame alleged in Issue 4. Student alleges in Paragraph 75 that she was placed by the department of social services or Fresno County Department of Probation at Milhous in Elk Grove on October 3, 2016. Paragraph 77 alleges Elk Grove should have immediately convened an IEP team meeting and offered Student a more restrictive setting. She also alleges Elk Grove should have offered her an assessment plan and changed her eligibility to emotional disturbance. Paragraphs 78 and 79 allege Student was hospitalized two days after her placement at Milhous and remained in a psychiatric hospital until November 7, 2016, when she was returned to juvenile hall. The

remainder of the complaint's 142 factual allegations addresses claims against other responding parties. Student seeks remedies jointly against all of the respondents, including compensatory education and counseling, placement in an out-of-state residential treatment program with transportation and lodging for Parents, and other remedies that are specifically directed at other responding parties.

Reading Paragraphs 75 through 79 in conjunction with the several sub-issues articulated in Issue 4, Student's complaint has stated enough facts in connection with Issue 4 to put Elk Grove on notice of the issues forming the basis of the complaint against it. Student's complaint identifies the issues and adequate related facts about the problem to permit Elk Grove to respond to the complaint and participate in a resolution session and mediation. Similarly, the complaint identifies sufficient proposed resolutions.

Therefore, Student's complaint, specifically Issue 4 and all subparts, is sufficient as to Elk Grove.

ORDER

1. Issue 4 of Student's complaint is sufficient as to Elk Grove 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: August 14, 2017

DocuSigned by:
Adrienne L. Krikorian
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ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings