BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

BURBANK UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022050162

ORDER OF DETERMINATION OF SUFFICIENCY OF ISSUE ONE AND INSUFFIENCY OF ISSUE TWO OF DUE PROCESS COMPLAINT

MAY 23, 2022

On May 3, 2022, Parents on behalf of Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Burbank Unified School District. On May 18, 2022, Burbank 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).

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

Student alleges two issues in the complaint. Student's first issue alleges Burbank unlawfully failed to identify Student as eligible for special education, from February 2020, to December 2020. The complaint describes Student's academic difficulties during this time and that Burbank's initial assessment was insufficient. The facts alleged in Student's complaint are sufficient as to this issue. Student's complaint identifies the issue and adequate facts about the problem to permit Burbank to respond and participate in a resolution session and mediation. In sum, the complaint is sufficiently plead as to issue one.

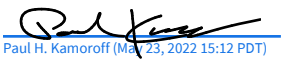
Student's second issue alleges that Student is entitled to compensatory education. Compensatory education is a remedy not an issue. While Student describes that Student suffers from various academic problems under this section, Student fails to identify an issue. Consequently, Student failed to identify an issue and adequate facts about the problem to permit Burbank to respond and participate in a resolution session and mediation. Therefore, the complaint is insufficiently plead as to issue two.

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 is 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).

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. The filing of an amended complaint will restart the applicable timelines for a due process hearing.
5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issue One of Student's complaint.

IT IS SO ORDERED.



Paul H Kamoroff

Administrative Law Judge

Office of Administrative Hearings