BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

ELK GROVE UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023081034

ORDER DETERMINING DUE PROCESS COMPLAINT INSUFFICIENT

SEPTEMBER 15, 2023

On August 25, 2023, Parent on behalf of Student, filed a due process hearing request, called a complaint, with the Office of Administrative Hearings, called OAH, naming Elk Grove Unified School District. On September 12, 2023, Elk Grove filed a notice of insufficiency as to the complaint requesting that the entire complaint be deemed insufficient.

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).

ELK GROVE FILED A TIMELY NOTICE OF INSUFFIIENCY

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).) Elk Grove filed its notice of insufficiency within 15 days of receiving the complaint. Thus, Elk Grove filed a notice of insufficiency.

STUDENT'S COMPLAINT IS INSUFFICIENT IN ITS ENTIREITY

Elk Grove asserts that Student's complaint is insufficient because:

- the issues are unclear; and
- the issues fall outside the statute of limitations without any supportable facts pled supporting extending the statutory time frame.

For these reasons, Elk Grove argues that the complaint lacks sufficient information to put it on notice as to what is being alleged.

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, called a FAPE; (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.]; *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.)

STUDENT'S ISSUES ARE UNCLEAR AND INSUFFICIENT.

Student's complaint consists of two pages of writing without delineating any specific issues or allegations. The complaint consists of a stream of consciousness of broad grievances and laws against the respondent from approximately 2010 to an unspecified time. Thus, the complaint lacks any articulable issues pleading specific denials of FAPE, any specificity regarding how many issues are plead, or supporting facts specific to any issues, to put the respondent on notice of the description of the problem to participate in resolution, mediation, due process hearing, or to defend itself. Accordingly, Student's complaint is insufficiently pled in its entirety.

MEDIATOR ASSISTANCE FOR NON-REPRESENTED PARENTS:

A parent without an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. (Ed. Code, § 56505.) Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

ORDER

1. Student's complaint is insufficiently pled under section title 20 United States Code 1415(c)(2)(D).
2. Student is permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).
3. The amended complaint must comply with the requirements of title 20 U.S.C. section 1415(b)(7)(A)(ii) and must 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.

Cynthia Fritz

Cynthia Fritz
Administrative Law Judge
Office of Administrative Hearings