BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

LAKE ELSINORE UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2020090443

ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

SEPTEMBER 16, 2020

On August 28, 2020, Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Lake Elsinore Unified School District. On September 14, 2020, Lake Elsinore filed a Notice of Insufficiency as to the complaint, as Lake Elsinore proffered the NOI was timely as it received a copy of Student's complaint on September 11, 2020.

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).

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).)

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.)

On September 28, 2017, the attorney general issued an opinion letter which considered whether the Individuals with Disabilities Education Act, the implementing regulations, and/or the California Education Code authorized a party to special education due process proceedings to be represented by a person that was not an active member of the California State Bar. The attorney general's opinion concluded that these laws did not authorize parties to a special education due process hearing to be represented by a person that is not an active member of the California State Bar in due process hearings. (100 Ops. Cal. Atty. Gen. 19 (2017).)

DISCUSSION

Student's complaint was filed with OAH on August 28, 2020. Lake Elsinore's NOI was dated, filed with OAH, and served on September 14, 2020, which is more than 15 days after OAH received the complaint. However, Lake Elsinore's NOI was timely filed as it established that it did not receive Student's complaint until September 11, 2020, especially the complaint does not contain a proof of service.

Student's complaint is an improper form pleading that insufficiently pled claims. Student primarily alleges that Lake Elsinore failed to implement Student's Individualized Education Program, called IEP, since March of 2020, failed to provide Parent with notice

of a change in Student's IEP, and materially changed the IEP. The issues are general and not specific to Student, as the complaint fails to identify the IEP or services that are in dispute. Student's allegations are overly vague and fails to provide sufficient information for Lake Elsinore to understand the issues forming the basis of the complaint.

The complaint is identical to complaints for other students filed by Attorneys Peter G. Albert and Patrick Donohue, which OAH deemed insufficient. (See *Student v. Poway Unified School District* (August 25, 2020) OAH Case No. 2020080526 [Order Finding Student's Due Process Complaint Insufficient]; *Student v. Saddleback Valley Unified School District* (August 27, 2020) OAH Case No. 2020080561 [Order Finding Student's Due Process Complaint Insufficient].) Student's attorneys overlook that each child's educational program is unique and a complaint alleging a denial of a free appropriate public education must be specific to Student. Here, the complaint could be for any child in any school district, thereby making it impossible for Lake Elsinore to prepare for a resolution session or mediation for this matter. For these reasons, Student's complaint is insufficient.

Further, OAH takes judicial notice, California Evidence Code, section 451, subdivision (a), of the September 2, 2020 Order to Show by Chief Judge Colleen McMahon of the Southern District of New York, involving the Brian Injury Group's class action against all school districts in the United States that involve the facts alleged in this complaint against Lake Elsinore. Chief Judge McMahon's Order to Show Cause stated:

> The court harbors considerable doubt that it has jurisdiction over any school district in any state other than New York, where it sits. Therefore, Plaintiffs are ORDERED TO SHOW CAUSE, in a brief of no more than ten

double spaced pages, why the complaint should not be dismissed as against all school districts from the other 49 states. I would strongly urge Plaintiffs' counsel to address recent Supreme Court jurisprudence on personal jurisdiction over corporations (school districts are municipal corporations) in that brief, with citations to legal authority - not hortatory arguments - addressing the potential jurisdictional defect. I note that service does not appear to have been made on every school district in the United States (which would require that a copy of the summons and complaint be delivered to each such district in the manner provided for by Fed. R. Civ. P. 4), so the court believes that this issue is best raised sua sponte and addressed before any other. I should note that I have reviewed the brief filed in support of Plaintiffs' order to show cause - which, by the way, has never been filed on ECF (it was apparently emailed to the Part I judge) - and the arguments made in that brief for exercising long-arm jurisdiction over the out-of-state school districts and education departments (that they receive federal funding administered through local agencies in New York; that their pension fund and bond investments through New York-based financial institutions constitute "transacting business" in New York for purposes of the long-arm statute; that their failure to provide special education services after receiving federal funds by electronic means somehow violates RICO; and that this "fraudulent" receipt of federal funds also violates the False Claims Act) do not pass what one of my former partners called "the laugh test." They are facially deficient. If Plaintiffs' counsel can do no better than that, the complaint will be dismissed as to all out-of-state Defendants.

J.T., individually and on behalf of D.T., et al. v. Bill de Blasio, et al. (S.D.N.Y. Sept. 2, 2020, 20 Civ. 5878 (CM)) 120 LRP 26297.

Attorneys Peter G. Albert and Patrick Donohue filed the complaint on behalf of Student. Neither attorney appears to be authorized to practice law in the State of California, in violation of the above authority. Consequently, Attorneys Albert and Donohue were not authorized to file the complaint on behalf of Student. Accordingly, Student shall file the amended complaint through an attorney licensed to practice law in California or through Parent as a self-represented litigant.

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 by an attorney licensed to practice law in California or by Parent as a self-represented litigant, the complaint will be dismissed.
5. All dates previously set in this matter are vacated.

IT IS SO ORDERED.



Peter Paul Castillo

Presiding Administrative Law Judge

Office of Administrative Hearings