BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

ETIWANDA SCHOOL DISTRICT.

OAH CASE NUMBER 2021040144

ORDER FINDING DUE PROCESS COMPLAINT SUFFICIENT

APRIL 19, 2021

On April 6, 2021D, Parent on Student's behalf filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Etiwanda School District. On April 15, 2021 Etiwanda timely 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 Fed.Reg. 6,540-46541, 46699.)

DISCUSSION

Student's complaint alleges that for the past seven years Student has made no meaningful progress in any of Etiwanda's placements. Student has unmet sensory and visual needs that interfere with Student's access to education.

Issue 1 alleges that Etiwanda predetermined Student's educational placement by declining to allow Parents meaningful participation in the placement decision. Student alleges that Etiwanda refused for several years, and most recently at the April 2, 2021 individualized education program team meeting, to allow Parents to view Port View Academy, a nonpublic school, as a possible placement. Student also alleges Student has made no progress in any placements by Etiwanda.

Student alleges in Issue 2 that, as recently as Student's April 2, 2021 individualized education program team meeting, Etiwanda failed to implement recommendations from independent educational evaluations for occupational therapy and vision, deferring instead to trying Etiwanda's own interventions.

The facts alleged in Student's complaint are sufficient to put Etiwanda on notice of the issues. Student's complaint identifies the issues and adequate facts about the problem to permit Etiwanda to respond and participate in a resolution session and mediation. Student has offered proposed resolutions which are also sufficient. Etiwanda's argument that Student's claims may precede the applicable statute of limitations are not appropriately addressed in a notice of insufficiency.

The complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii). All mediation, prehearing conference, and hearing dates in this matter are confirmed.

IT IS SO ORDERED.

Adrienne L. Krikorian

Adrienne L. Krikorian

Administrative Law Judge

Office of Administrative Hearings