BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ELK GROVE UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017110128 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On November 2, 2017, Student filed a due process hearing request[1] (complaint) with the Office of Administrative Hearings naming Elk Grove Unified School District. On November 17, 2017, Elk Grove filed a notice of insufficiency as to 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.)

[1] A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 U.S.C. section 1415(b)(7)(A).

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 contains four Issues: Issue 1 alleges a denial of a FAPE for the 2015-2016 school year, with 13 subissues; Issue 2 alleges a denial of a FAPE For the 2016-2017 school year, with 13 subissues; and Issue 3 alleges a denial of a FAPE for the 2017-2018 school year, with 13 subissues. Issue 4 alleges that Elk Grove failed to "adequately assess" him in four different areas. Elk Grove claims confusion as to Student's use of the phrase, "including extended school year" in reference to the first three issues. Elk Grove, in its notice of insufficiency, also claims that three of the subissues for the 2015-2016 school year are insufficiently pled, as well as three subissues for the 2016-2017 school year. Finally, Elk Grove complains that Student's proposed resolutions are insufficiently pled.

In regards to Elk Grove's purported confusion as to Student's use of the phrase, "including extended school year," this phrase is used because Student wants to make sure Elk Grove understands that some of the subissues may related to special education classes and services that are offered to some students for part of the summer break which is referred to as "extended school year." Without that phrase, the reader of the complaint might think that the period of time encompassed for each of the first three issues was just the regular school year. Use of the phrase "including extended school year," does not render the complaint insufficiently pled.

In regards to Issue 1, Elk Grove complains subissues 1(e), 1(f), and 1(j) are insufficiently pled. Issue 1(e) States that Student was denied a FAPE during the 2015-2016 school year because Elk Grove "fail[ed] to convene an IEP [individualized education program] team meeting when he was not making adequate anticipated progress." In paragraph 9, Student refers to the date of November 2, 2015, as a time when Elk Grove "should have known that the March 2015 IEP was not adequate to meet [Student]'s needs, and that he was not making adequate, anticipated progress." Student then alleges that Elk

Grove should have convened an IEP team meeting to address this. Paragraph 10 relates Student's teacher preparing a report for Student's annual IEP team meeting in March 2016, that reflected Student having little or no skills in several areas where a child of that age developmentally would have skills, and paragraph 11 lists goal areas where Student had not met the goals. Thus, subissue 1(e) is sufficiently pled.

Subissue 1(f) is a claim that Elk Grove "predetermine[ed] [Student's] IEP placement and services[.]" The complaint contains information concerning an IEP team meeting on May 19, 2016, in paragraph 18, and several following paragraphs. Paragraph 28 claims that Elk Grove predetermined its offer of occupational and speech and language therapy in that it offered only "whole class instruction." Thus Issue 1(f) is sufficiently pled.

Subissue 1(j) is an allegation that Elk Grove denied Student a FAPE because it "fail[ed] to offer an appropriate behavior support plan[.]" Paragraph 15 of the complaint discusses a functional behavior assessment that was completed by Elk Grove on May 17, 2016, in which it was reported that Student was trantruming and engaging in self-injurious behaviors. As a result of the behavior assessment, a behavior support plan was developed. There is no information in the complaint that establishes that Student had a behavior support plan before this time, although he did have the reported maladaptive behaviors for some period of time before the behavior support plan was developed. Thus subissue 1(j) is sufficiently pled.

In regards to Issue 2, Elk Grove complains that subissues 2(a), 2(g), and 2(m) are insufficiently pled. Issue 2(a) is an allegation that Student was denied a FAPE during the 2016-2017 school year because Parents were not timely provided with a copy of the IEP. The complaint is devoid of any facts that would substantiate this claim if they were found to be true. Accordingly, subissue 2(a) is insufficiently pled.

In regards to subissue 2(g), Student claims he was denied a FAPE during the 2016-2017 school year because Elk Grove "predetermin[ed] his IEP placement and services." In paragraph 44, Student discusses predetermination of the offers of occupational therapy and speech and language therapy, claiming only whole class instruction was the mode for providing these services. Thus, subissue 2(g) is sufficiently pled.

Subissue 2(m) alleges Student was denied a FAPE during the 2016-2017 school year because he was "improperly" restrained. Paragraph 35 discussion an independent behavior assessment being conducted, and paragraph 36 states that during this assessment "[Student] and the other students were being improperly restrained by the teacher through the use of a rope line." Thus, subissue 2(m) is sufficiently pled.

As determined above, all of the issues in the complaint are sufficiently pled with the exception of subissue 2(a), and they are sufficiently pled to put Elk Grove on notice as to the basis of Student's claims.

Student proposes the following resolutions: 1) declaratory relief that Elk Grove denied him a FAPE during the time period at issue, and that he was not adequately assessed; 2) funding for independent educational evaluations in the areas of academic achievement, assistive technology/alternative augmentative communication and inclusion; 3) funding for the independent assessors to attend the IEP team meeting that is convened to review their assessments; 4) compensatory education including academic tutoring, speech and language therapy, social skills training, assistive technology/alternative augmentative communication, and occupational therapy, and funding of transportation to and from these services; 5) a right to amend the resolutions when the independent assessments are received; 6) details about prospective placement and services are proposed; and 7) such other relief as deemed appropriate by the administrative law judge hearing the case.

A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (20 U.S.C. §1415(b)(7)(A)(ii)(IV).) The proposed resolutions stated in Student's complaint are well-defined. Elk Grove complains that declaratory relief is not available in due process matters, and the compensatory education request does not contain details about how the services are to be provided, or the amount of services being requested. Elk Grove also complains about proposed resolution 7 since it allows the ALJ hearing the case to grant such vague relief that Elk Grove cannot raise a defense. OAH Decisions contain findings of fact and legal conclusions that amount to declaratory relief, though not labeled as such. Further, there is nothing in the law governing these proceedings that requires the detailed amount of information Elk Grove claims it should receive regarding the compensatory education Student is requesting. Finally, the ALJ hearing the case may, should it find against Elk Grove, devise a resolution that is deemed appropriate, even though it may not have been requested by Student. Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time the complaint was filed.

ORDER

1. Issues 1, 2(b)-(m), -3, and 4 of Student's complaint are sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).

2. Issue 2(a) 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).[2]

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.

[2] 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 Issues 1. 2(b)-(m), 3, and 4 in Student's complaint.

DATE: November 20, 2017

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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings