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. 2017080698 ORDER DENYING DISTRICT'S NOTICE OF INSUFFICIENCY

On August 16, 2017, Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming Elk Grove Unified School District. On August 31, 2017, District filed a Notice of Insufficiency 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.)

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

[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).

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 in the complaint that District denied Student a FAPE during the 2015-2016, 2016-2017, and 2017-2018 school years, including extended school year, by failing to properly offer and/or provide a combination of the following: (1) adequate specialized academic instruction; (2) extended school year services; (3) measurable goals in all areas of need; (4) direct instruction in executive function; (5) mental health services; (6) appropriate accommodations; (7) adequate present levels of performance or baselines; (8) triennial assessments; (9) adequate goal progress reports; and (10) adequate IEP documentation of accommodations. The complaint also alleges that District failed to convene IEP team meetings when Student was not making adequate progress, or in anticipation of a school site change. The complaint also alleges District failed to implement the IEP and failed to rectify a hostile learning environment.

As remedies, Student requests: (1) psycho-educational, social emotional, academic achievement, assistive technology, and transition independent assessments and that District convene an IEP team meeting, with independent assessors in attendance, after the completion of the independent assessments; (2) compensatory education including specialized academic instruction, direct executive functioning instruction, academic tutoring (*e.g.* Lindamood Bell) and mental health counseling; (3) adequate accommodations and goals in all areas of need; and (4) that Student be eligible for extra-curricular activities.

District's notice of insufficiency contends that the 2015-2016 school year allegations were outside of the statute of limitations, and that until District offered a new IEP, most of the 2017-2018 school year, with the exception of September and two weeks in October, were not ripe for adjudication. These two contentions are beyond the scope of a notice of insufficiency challenge, and irrelevant to whether the complaint provides "an awareness and understanding of the issues forming the basis of the complaint." Therefore, these two contentions are not addressed in this Order.

It also raises Student's failure to: (1) delineate the remedies to each FAPE denial; (2) articulate why additional specialized academic instruction was needed; (3) specify the type of specialized academic instruction requested; (4) articulate why ESY was required; and

(5) articulate a nexus between the "hostile environment" allegations and Student's IEP. The specific explanations enumerated by District are beyond that which is required for a complaint to be deemed sufficient. The facts in the complaint are sufficient to put District on notice of the issues forming the basis of Student's complaint. Accordingly, District's notice of insufficiency is denied.

ORDER

1. The complaint is sufficient under title 20 United States Code section 1415(b)(7)(A) and Education Code section 56502, subdivision (d)(1).

2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

DATE: September 1, 2017

DocuSigned by:
Sabrina Kong
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SABRINA KONG
Administrative Law Judge
Office of Administrative Hearings