

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

CALIFORNIA DEPARTMENT OF EDUCATION,
NORTHERN HUMBOLDT UNION HIGH SCHOOL DISTRICT,
HUMBOLDT COUNTY OFFICE OF EDUCATION, AND
REDWOOD COAST REGIONAL CENTER.

OAH CASE NUMBER 2021070937

ORDER FINDING DUE PROCESS COMPLAINT
INSUFFICIENT AS TO CALIFORNIA DEPARTMENT OF
EDUCATION

AUGUST 10, 2021

On July 29, 2021, Parent on behalf of adult Student filed a due process hearing request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming California Department of Education, called CDE, Northern Humboldt Union High School District, Humboldt County Office of Education, Department of

Developmental Services, and Redwood Coast Regional Center. Department of Developmental Services was not served, and so cannot be a party to this due process proceeding. (See Cal. Code Regs., tit. 5, § 3083, subds. (b) & (c); 34 U.S.C. §§ 1415(b)(7)(A) & (B).)

On August 4, 2021, Student served CDE with a copy of the complaint. On August 9, 2021, CDE filed a joint notice of insufficiency and motion to dismiss, which will be treated solely as a notice of insufficiency. As each of these motions involve separate law and analyses, if CDE wishes to file a separate motion to dismiss, it may do so.

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, 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, and 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 three issues. At Issues 1 and 3, Student generally alleges that various agencies have failed to provide special education and related services to Student. Student alleges that each agency contends Student is another agency's responsibility, and Student cannot be released from a residential placement in another state until a placement in California is offered and secured.

Issue 2 is alleged only against CDE, and is the only issue that mentions CDE. At Issue 2, Student alleges that CDE failed to ensure procedures were in place for resolving inter-agency disputes regarding reimbursement for the provision of FAPE. Student does not allege that CDE itself is responsible for providing a FAPE to Student, or any facts demonstrating that CDE has proposed a change regarding the Student's identification, evaluation, educational placement, or any component of Student's educational program. Therefore, Student failed to state sufficient facts supporting Issue 2, and the claim against CDE is insufficient.

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. Issue 2 of Student's complaint is insufficiently pled against California Department of Education under section title 20 United States Code 1415(c)(2)(D).
2. Student will be 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. The filing of an amended complaint will restart the applicable timelines for a due process hearing
4. If Student fails to file a timely amended complaint, the complaint will be dismissed as to California Department of Education.
5. If Student fails to file a timely amended complaint, the hearing shall proceed on Issues 1 and 3 as to the remaining respondents.

IT IS SO ORDERED.

Alexa Hohensee

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Administrative Law Judge

Office of Administrative Hearings