

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

ELK GROVE UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021080304

ORDER FINDING ISSUES 6, 7 AND 9 OF THE COMPLAINT
INSUFFICIENTLY PLEADED

AUGUST 26, 2021

On August 10, 2021, Parents as educational rights holders on behalf of adult Student filed a due process hearing request, called a complaint, with the Office of Administrative Hearings, referred to as OAH. The complaint named Elk Grove Unified School District. On August 25, 2021, Elk Grove timely filed a notice of insufficiency as to Issues 3 through 9 of Student's 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. 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

The facts alleged in Student's complaint are sufficient as to Issues 3, 4, 5 and 8, as Student identifies adequate facts about the problem to permit Elk Grove to respond and participate in a resolution session and mediation as to those issues. Student alleges in detail that he was denied a FAPE when Elk Grove did not properly implement his

individualized education programs, or IEPs, in March 2020 and May 2020, because Student did not receive the special education and services, accommodations and modifications, and placements offered. These facts provide Elk Grove with an awareness and understanding of Issues 3, 4, and 5, respectively, that it failed to implement Student's IEPs as to services, accommodations and placement. Student alleges that he required, but was not offered, a one-to-one aide to access distance learning. The facts are sufficient to provide Elk Grove with an awareness and understanding of Issue 8, that Elk Grove denied Student a FAPE when it failed to offer a one-on-one aide during distance learning.

However, Issues 6, 7 and 9 are insufficiently alleged. Student recites verbatim the goals in Student's May 5, 2020 IEP at pages 17 through 19 of the complaint. Student does not allege any facts regarding an insufficient number of goals or why Student contends that goals were inappropriate. At Issues 6 and 9, Student alleges that Elk Grove failed to modify, adjust or reassess Student's goals in the May 5, 2020 offer of FAPE to meet his needs, but the complaint is devoid of facts regarding those goals other than a verbatim recitation. Issues 6 and 9 read as template allegations without substance. Similarly, Issue 7 alleges that Elk Grove failed to address Student's regression during distance learning, but alleges no facts regarding when or in what ways Student regressed. The complaint fails to provide Elk Grove with the required problem description and the facts relating to Issues 6, 7 or 9.

ORDER

1. Issues 1 and 2, which are not challenged by the notice of insufficiency, and Issues 3, 4, 5 and 8 of Student's complaint are sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).

2. Issues 6, 7 and 9 of Student's complaint are insufficiently pleaded 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).
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. 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, 3, 4, 5 and 8 in Student's complaint.

Alexa Hohensee

Alexa Hohensee

Administrative Law Judge

Office of Administrative Hearings