

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

IN THE MATTER OF:  
PARENTS ON BEHALF OF STUDENT,

v.

BURBANK UNIFIED SCHOOL DISTRICT.  
OAH CASE NUMBER 2021090361

ORDER FINDING COMPLAINT SUFFICIENTLY PLEADED

SEPTEMBER 17, 2021

On September 13, 2021, Parent on behalf of Student filed a due process hearing request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Burbank Unified School District. On September 16, 2021, Burbank filed a notice of insufficiency.

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, 1<sup>st</sup> Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1<sup>st</sup> 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.)

Service of documents in special education due process proceedings is governed by the California Code of Regulations, title 5, section 3083, which states that service of notice, motions, or other writings pertaining to special education due process hearing procedures shall be delivered personally or sent by mail or other means to the party's attorney or other authorized representative. Unless otherwise specified, the form of mail, service or notice by mail may be by first-class mail, registered mail, or certified mail, by mail delivery service, by facsimile transmission if complete and without error, or by other electronic means as provided by regulation, in the discretion of the sender. There is no specific provision or regulation authorizing service of documents solely by email.

Although not specifically applicable to special education due process proceedings, Code of Civil Procedure section 1010.6 states, in pertinent part, that electronic service of documents is not authorized unless a party or other person has expressly consented to receive electronic service in that specific action, or the court has ordered electronic service.

In this matter, counsel for Student has not provided any documentation that Burbank has agreed to service of the complaint by email. However, Burbank waived any such argument by filing a notice of representation through legal counsel and filing a motion challenging the contents of Student's complaint. Interestingly, Burbank chose to serve Student by email as well. Here, Burbank received sufficient notice of the contents of the complaint.

Turning to the substance of the pleading, Burbank contends that the complaint is a form complaint in nature and does not sufficiently identify the problems alleged. Although the complaint is very sparse in detail, it alleges four claims, that Burbank denied Student a free appropriate public education beginning in March 2020 when it unilaterally changed Student's placement and the delivery method for instruction and related services to an in-home program rather than in-person, and failed to implement Student's October 30, 2019 and October 28, 2020 individualized education programs, or IEPs, as written without notification or consent of Parent. Student seeks an order that his IEPs be implemented as written, and that Parent be reimbursed for educationally related costs to provide an appropriate program for Student when Burbank did not.

The facts alleged in Student's complaint are sufficient. Student's complaint identifies the issues and adequate facts about the problem to permit Burbank to respond and participate in a resolution session and mediation.

Therefore, Student's statement of the claims is sufficient.

## ORDER

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

*Alexa Hohensee*

Alexa Hohensee

Administrative Law Judge

Office of Administrative Hearings