

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

OCEAN VIEW SCHOOL DISTRICT.
OAH CASE NUMBER 2021090849

ORDER DENYING NOTICE OF INSUFFICIENCY

OCTOBER 7, 2021

On September 28, 2021, Parent on Student's behalf filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Ocean View School District. On September 29, 2021, Ocean View filed a motion to dismiss. OAH partially granted the motion as to Student's Issues 1 and 2 on the grounds that the stated issues did not fall under OAH jurisdiction. On October 6, 2021, Ocean View timely filed a Notice of Insufficiency as to Issue 3, the only remaining issue.

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. (*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.)

Student's Issue 3 asserts that Student, who has attention deficit hyperactivity disorder, needed "one on one help" during distance learning while school closures were in place as a result of the Covid-19 Pandemic. Student alleges that Student required

being in a classroom with a teacher present to access his education. In essence, Student alleges that Ocean View denied Student a FAPE by failing to deliver instruction with one to one support from a teacher during school closures.

Student has stated enough facts supporting Issue 3, and therefore the claim is sufficiently pled under section title 20 United States Code 1415(c)(2)(D). Student's proposed resolutions are also sufficient. Ocean View has enough facts to prepare for and participate in a resolution session and mediation and to proceed to hearing.

The Notice of Insufficiency is denied.

IT IS SO ORDERED.

Adrienne L. Krikorian

Adrienne L. Krikorian

Administrative Law Judge

Office of Administrative Hearings