

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

ASSURANCE LEARNING ACADEMY.

OAH CASE NUMBER 2021100851

ORDER FINDING STUDENT'S COMPLAINT SUFFICIENT

NOVEMBER 17, 2021

On October 28, 2021, Student filed a due process hearing request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Assurance Learning Academy. On November 12, 2021, Assurance filed a notice of insufficiency as to the three issues alleged in 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 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; includes facts about the problem; and 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 Fed.Reg. 46540-46541, 46699.)

DISCUSSION

The facts alleged at Issues 1 and 2 of Student's complaint are sufficient. Student alleges that she presented with academic deficits while at Assurance, but despite trivial progress and no triennial assessment, Assurance drafted individualized education programs, or IEPs, that failed to include present levels of performance and offered deficient goals and services to give Student the academic support she needed. Issue 1 alleges that the IEP of February 11, 2020, and its amendments, denied Student a FAPE. Issue 2 alleges that the February 2, 2021 IEP, and its amendments, denied Student a

FAPE. Student's detailed complaint identifies the claims and adequate facts about the problem to permit Assurance to respond and participate in a resolution session and mediation, and prepare for a due process hearing, on Issues 1 and 2.

Issue 3 is also sufficiently pleaded. Student alleges that Assurance had an obligation to, but did not, conduct a triennial psychoeducational assessment to inform the IEP teams about Student's present levels of performance. The complaint alleges that as a result, Student's IEP teams had to rely on outdated information from an April 2016 triennial assessment. Assurance contends that Issue 3 is outside the statute of limitations. However, that is the subject of a motion to dismiss, not a notice of insufficiency. Student's complaint identifies the claim and adequate facts about Issue 3 to permit Assurance to respond and participate in a resolution session and mediation, and prepare for a due process hearing, on Issue 3.

Therefore, Student's statement of Issues 1, 2 and 3 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.

Peter Paul Castillo

Peter Paul Castillo

Presiding Administrative Law Judge

Office of Administrative Hearings