

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

TRACY UNIFIED SCHOOL DISTRICT.
OAH CASE NUMBER 2021110662

ORDER FINDING DUE PROCESS COMPLAINT SUFFICIENT

DECEMBER 8, 2021

On November 22, 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 Tracy Unified School District. On December 7, 2021, Tracy timely filed a notice of insufficiency as to the 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 FR 46,540-46541, 46699.)

DISCUSSION

The facts alleged in Student's complaint are sufficient. Student's 56-page complaint is rich with date and event detail. It alleges that from September 2019, Tracy disregarded Student's poor performance and Parent's requests for additional supports and delayed both in assessing Student and offering him the educational supports he needed as a Spanish speaking child. Student's complaint alleges that Student was not assessed in all areas of suspected disability and that Tracy did not provide Parent with records upon request, develop appropriate goals, offer sufficient related services, or

implement Student's individualized education programs, called IEPs, particularly during COVID-19 school closures. The main thrust of the complaint is that Tracy was aware Parents did not speak English or have or understand the technology necessary to access online instruction, or to understand Tracy's insistence that Student had to withdraw from special education to obtain bilingual instruction. The complaint alleges that Parent's revoked consent to special education so that Student could attend a bilingual program where both Student and Parents could communicate with the teacher, and that Student is not receiving a FAPE, and has since been subjected to disciplinary actions as a result of his disability-related actions in the classroom.

Student's complaint identifies the issues and adequate facts about the problem to permit Tracy to respond and participate in a resolution session and mediation. Tracy contends that it needs additional details about which particular Tracy staff members did or said what, and when they did or said it, but these additional details can be discussed at the resolution session. Tracy also asserts that Student has not provided enough detail regarding misrepresentations for an exception to the statute of limitations, but that may be grounds for a motion to dismiss, not a notice of insufficiency.

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.

IT IS SO ORDERED.

Alexa Hohensee

Alexa Hohensee

Administrative Law Judge

Office of Administrative Hearings