

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

STUDENT,

v.

EAST SAN GABRIEL VALLEY SELPA.

OAH CASE NUMBER 2021120652

ORDER DETERMINING INSUFFICIENCY OF FIRST
AMENDED DUE PROCESS COMPLAINT AND
DEEMING SECOND AMENDED COMPLAINT FILED

JANUARY 4, 2022

On January 3, 2022, Student filed a First Amended Due Process Hearing Request, called a first amended complaint, with the Office of Administrative Hearings, referred to as OAH, naming East San Gabriel Valley Special Education Local Plan Area, called a SELPA. On January 3, 2022, East San Gabriel Valley SELPA filed a Notice of Insufficiency as to the first amended complaint. On January 4, 2022, Student filed a second amended 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. (*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.)

DISCUSSION

Student's amended complaint alleges one insufficiently pleaded claim. The amended complaint fails to coherently describe a problem relating to the proposed change regarding the Student's identification, evaluation, or educational placement, or providing the Student a free appropriate public education, and lacks any facts about the problem. The complaint does not name a school district and fails to describe why East San Gabriel Valley SELPA is responsible for Student's educational program. The complaint fails to provide East San Gabriel Valley SELPA with the required problem description and the facts relating to the problem. The complaint is therefore insufficiently pleaded.

MEDIATOR ASSISTANCE FOR NON-REPRESENTED PARENTS/STUDENTS: A parent or adult student without an attorney may request that OAH provide a mediator to assist the parent/student in identifying the issues and proposed resolutions that must be included in a complaint. (Ed. Code, § 56505.) Student was previously encouraged to contact OAH for assistance if he intends to amend his due process hearing request, and is again informed of the availability of free assistance.

ORDER

1. Student's first amended complaint is insufficiently pleaded under title 20 United States Code section 1415(c)(2)(D).
2. Based on the insufficiency of Student's first amended complaint, Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II). The second amended complaint Student filed on

January 4, 2022, is deemed to be the amended complaint permitted under this order and is filed as of this date.

3. All dates previously set in this matter are vacated and OAH will issue a new scheduling order based on Student's January 4, 2022 second amended complaint.
4. If Student wishes to receive mediator assistance and further amend his complaint, he may contact OAH for mediator assistance. If after consulting the mediator Student again wishes to amend his complaint, he must file a motion to amend along with a proposed further amended complaint.

IT IS SO ORDERED.

Kara Hatfield

Kara Hatfield

Administrative Law Judge

Office of Administrative Hearings