BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

ELK GROVE UNIFIED SCHOOL DISTRICT AND SELPA.

OAH CASE NUMBER 2020110376

ORDER OF DETERMINATION OF PARTIAL SUFFICIENCY OF DUE PROCESS COMPLAINT

NOVEMBER 19, 2020

On November 11, 2020, Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Elk Grove Unified School District and special education local plan area, called SELPA. On November 19, 2020, Elk Grove filed a Notice of Insufficiency as to specific issues stated in 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: (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

Elk Grove challenged the sufficiency of Student's Issues 2, 4, 5, 7 (noting there is no issue numbered 6), 8, 9, 12, 13, 14, and 15.

Student's Issue 2 is stated as failing to "'identify, locate and evaluate' Student for special education in a timely fashion." The assertions Student made under the statement of the issue do not support or relate to the legal theory of the claim. However, the stated claim itself is sufficiently pleaded. Whether Student can prevail on the specific legal theory/claim stated is not the standard. Student's Issue 2 is stated sufficiently.

Student's Issue 4 is stated as failing to "provide Student for Assistive Technology." Student alleges Parents have repeatedly requested assistive technology, and Elk Grove has ignored the requests. While it would have been helpful if Student identified the dates on and methods by which Parents asked Elk Grove for assistive technology for Student, Student's complaint identifies the issue and adequate facts about the problem to permit Elk Grove to respond and participate in a resolution session and mediation. Student's Issue 4 is stated sufficiently.

Student's Issue 5 is stated as failing to allow Parents meaningful participation in Student's individualized education program, called an IEP, process by "refusing to give them the information, data, tests, assessments and evaluations [timely] that they

needed." (Brackets in original.) Student alleges Elk Grove did not give Parents information about the "special education program" Elk Grove offered, Student alleges Elk Grove predetermined the placement, services, and supports it offered Student. Student's complaint identifies the issue and adequate facts about the problem to permit Elk Grove to respond and participate in a resolution session and mediation. Student's Issue 5 is stated sufficiently.

Student's Issue 7 is stated as predetermining the outcome "of each and every IEP meeting without Parent participation and input." Student alleges Elk Grove only had one placement "in mind" for Student, that it was "one-size-fits-all," and Elk Grove did not allow Parents to participate in the decision of Student's placement offer. Student's complaint identifies the issue and adequate facts about the problem to permit Elk Grove to respond and participate in a resolution session and mediation. Student's Issue 7 is stated sufficiently.

Student's Issue 8 is stated as failing to discuss and deliberate a continuum of placement options for Student "at any of the IEP meetings." Student alleges Elk Grove did not discuss the continuum of placement options with Parents. Student also alleges dissatisfaction with instruction during the "Covid shutdown." Student's complaint identifies the issue and adequate facts about the problem to permit Elk Grove to respond and participate in a resolution session and mediation. Student's Issue 8 is stated sufficiently.

Student's Issue 9 is stated as failing to give Parents "appropriate" prior written notices "on any and all substantive requests from Parents pursuant to any other suggested testing, assessment, evaluations, services and supports over the last year." Student alleges "from the beginning" Elk Grove did not give Parents prior written notices "that were timely or legally adequate. Student alleges "all requests for services

and supports and refusals to give those services and supports have been ignored" by Elk Grove. Student's complaint does not adequately identify the specific requests Parents made, by date, method, or topic, to provide Elk Grove with the required problem description and the facts relating to the problem. Student's Issue 9 is not stated sufficiently.

Student's Issue 12 concerns an alleged pattern and practice of Elk Grove's placement of and services for special education students generally, not specifically concerning a failure to provide a free appropriate public education, called a FAPE, to Student in particular. OAH only has jurisdiction over claims related to the provision of a FAPE to a specific student, not generic claims regarding systemic events or effects. However, the stated claim itself is sufficiently pleaded. Whether Student can prevail on the specific legal theory/claim stated is not the standard. Student's Issue 12 is stated sufficiently.

Student's Issue 13 concerns an alleged pattern and practice of Elk Grove's highly restrictive placements of special education students generally, not specifically concerning a failure to provide a FAPE to Student in particular. OAH only has jurisdiction over claims related to the provision of a FAPE to a specific student, not generic claims regarding systemic events or effects. However, the stated claim itself is sufficiently pleaded. Whether Student can prevail on the specific legal theory/claim stated is not the standard. Student's Issue 13 is stated sufficiently.

Student's Issue 14 concerns an alleged financial strategy of Elk Grove using inexperienced teachers to save money, not specifically concerning a failure to provide a FAPE to Student in particular. OAH only has jurisdiction over claims related to the provision of a FAPE to a specific student, not generic claims regarding systemic events or effects. However, the stated claim itself is sufficiently pleaded. Whether Student can

prevail on the specific legal theory/claim stated is not the standard. Student's Issue 14 is stated sufficiently.

Student's Issue 15 concerns an alleged financial strategy of Elk Grove placing students in dangerous placements without proper adult supervision to save money, not specifically concerning a failure to provide a FAPE to Student in particular. OAH only has jurisdiction over claims related to the provision of a FAPE to a specific student, not generic claims regarding systemic events or effects. However, the stated claim itself is sufficiently pleaded. Whether Student can prevail on the specific legal theory/claim stated is not the standard. Student's Issue 15 is stated sufficiently.

MEDIATOR ASSISTANCE FOR NON-REPRESENTED PARENTS: A parent without an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. (Ed. Code, § 56505.) Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

ORDER

1. Issues 2, 4, 5, 7 (noting there is no issue numbered 6), 8, 12, 13, 14, and 15 of Student's complaint are sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. Issue 9 is insufficiently pled under title 20 United States Code section 1415(c)(2)(D).
3. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).
4. The amended complaint shall comply with the requirements of title 20 United States Code section 1415(b)(7)(A)(ii), and shall be filed not later than 14 days

from the date of this order. The filing of an amended complaint will restart the applicable timelines for a due process hearing.

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues 1, 2, 3, 4, 5, 7 (there is no Issue 6), 8, 10, 11, 12, 13, 14, 15, and 16 in Student's complaint.

IT IS SO ORDERED.

Kara Hatfield

Kara Hatfield

Administrative Law Judge

Office of Administrative Hearings