BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ELK GROVE UNIFIED SCHOOL DISTRICT.	OAH Case No. 2019020112 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On February 4, 2019, Student filed a due process hearing request[1] (complaint) with the Office of Administrative Hearings naming Elk Grove Unified School District. On February 21, 2019, Elk Grove filed a notice of insufficiency as to Student's complaint.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint. (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).

The complaint is deemed sufficient unless a party notifies the Office of Administrative Hearings and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements. (20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).)

A complaint is sufficient if it contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem 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

[1] A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 U.S.C. section 1415(b)(7)(A).

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 filed his complaint with OAH on February 4, 2019. The proof of service attached to the complaint indicates that the complaint was mailed to Elk Grove on February 4, 2019. In its notice of insufficiency Elk Grove indicates it received the complaint on February 6, 2019. Therefore, the notice of insufficiency was timely filed.

Student states two "problems/complaints" (issues) in his complaint. Student's first issue is a claim that Elk Grove "[f]ail(ed) to perform and implement a functional behavior assessment in [Student]'s classroom environment since the fifth grade." The cover sheet of the complaint indicates Student is now in the sixth grade. Student proposes as a resolution that Elk Grove perform a functional behavior assessment and implement it. In its notice of insufficiency Elk Grove alleges that the complaint is insufficiently plead because there are no facts alleged "that a[n] FBA [functional behavior assessment] was legally required." In addition, Elk Grove claims the issue is insufficiently plead because there is no explanation as to why Parent believes a functional behavior assessment was required. However, although Elk Grove appears to want the information it believes the complaint lacks, this information is not required for the issue to be sufficiently plead. Accordingly, Student's first issue is sufficiently plead, and Elk Grove has been supplied with enough information to prepare for a resolution session, mediation and a due process hearing.

Student's second issue is that "[Student]'s placement in a Special Day Class is inappropriate since he is not cognitively delayed." The proposed resolution is that Student be provided with a resource specialist program and a classroom aide to ensure he attentive during instructional time. Elk Grove's explanation as to why it believes this issue is insufficiently plead is that information is not provided as to why Student is being denied a free appropriate public education due to his placement in a special day class. However, Elk

Grove does not require this information to prepare for a resolution session, mediation and a due process hearing. Accordingly, Student's second issue is sufficiently plead.

The facts alleged in Student's complaint are sufficient to provide Elk Grove notice of the issues forming the basis of the complaint, and sufficient information to permit it respond to the complaint and participate in a resolution session, mediation and due process hearing.

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.

DATE: February 22, 2019

DocuSigned by:
Rebecca Freie
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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings