BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

REDDING SCHOOL DISTRICT AND SHASTA COUNTY SELPA.

OAH CASE NUMBER 2020120501

ORDER OF DETERMINATION OF INSUFFICIENCY OF DUE PROCESS COMPLAINT AS TO REDDING SCHOOL DISTRICT; DENYING MOTION TO DISMISS AS NOT FILED AS A SEPARATE MOTION

DECEMBER 30, 2020

On December 15, 2020 Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Redding School District and Shasta County Special Education Local Plan Area, referred to as Shasta County SELPA, as respondents. On December 23, 2020, OAH determined that Student's complaint was insufficient as to Shasta County SELPA. On December 28, 2020, Redding filed a Notice of Insufficiency as to the complaint. The NOI was combined with a Motion to Dismiss. The parties are advised that OAH addresses single

motions filed in a pleading. Here, the Notice of Insufficiency is addressed as the time period to file is limited by statute. The Motion to Dismiss is deemed a separate motion and is not considered. Nothing in this order prevents Redding from filing a separate motion to dismiss.

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

NOTICE OF INSUFFICIENCY

Student's complaint alleges three issues: negligence, that the "district" is not acting in Student's best interest or addressing the acuity of the situation, and that Student experienced excessive restraint that exacerbated Student's emotional dysregulation. Student named two parties in this case. As to issues one and three, Student failed to assert facts establishing what conduct Redding engaged in giving rise to those claims. As to issue two, Student included a claim against Redding, but failed to include facts establishing how this claim involves Student's identification, evaluation, educational placement or the provision of FAPE. These omissions render the complaint vague and confusing. The complaint fails to provide Redding the basic information necessary to know how to participate in a resolution session and mediation or prepare for a due process hearing. Accordingly, it is deemed insufficient as to Redding.

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.) Following this motion, Student submitted notice of representation. Accordingly, mediator assistance is not available in this case.

ORDER

1. Student's complaint is insufficiently pled under section title 20 United States Code 1415(c)(2)(D).
2. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).
3. The amended complaint shall comply with the requirements of title 20 U.S.C. section 1415(b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.
4. If Student fails to file a timely and legally sufficient amended complaint as to Redding, the complaint against Redding will be dismissed.
5. Redding's Motion to Dismiss is denied.
6. All dates previously set in this matter remain.

IT IS SO ORDERED.

Claire Yazigi
Claire Yazigi (Dec 30, 2020 10:29 PST)

Claire Yazigi

Administrative Law Judge

Office of Administrative Hearings