BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

FALLBROOK UNION ELEMENTARY SCHOOL DISTRICT.

OAH CASE NUMBER 2022040224

ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

APRIL 15, 2022

On April 07, 2022, Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Fallbrook Union Elementary. On April 15, 2022, Fallbrook 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: (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 complaint alleges two insufficiently pled claims. Student's first issue is plead as: "District failures to make timely adjustments to J health throughout his daily school routine and pick/choose what components to follow in the healthy." This vague statement fails to provide Fallbrook with enough specifics to know what area of Student's program Parent is challenging. Specifically, what adjustments is the district failing to make and to what area of Student's IEP. As plead this issue does not provide sufficient information for Fallbrook to prepare for the hearing and how to participate in resolution sessions and mediation.

Student's second issue is equally unclear. Student's second issue as plead is: "Repeated concerns of toileting issues, GI concerns that leads to missing days out of school, and having the child outside for physical activities when the asthma area to the health plan specifically states not to go outside, which the parent, pcp doctor and his specialist doctors have adjusted the health plan numerous of times to provide specific details and guided temperature system to help the staff, which the child has aide during unstructure time (pe, recess, and other times aide with him so time to go inside)." Student fails to plead specific facts or provide Fallbrook with sufficient information to prepare for the hearing and how to participate in resolution sessions and mediation.

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. 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 amended complaint, the complaint will be dismissed.
5. All dates previously set in this matter are vacated.

IT IS SO ORDERED.

Tiffany Gilmartin
Tiffany Gilmartin (Apr 18, 2022 08:12 PDT)

Tiffany Gilmartin

Administrative Law Judge

Office of Administrative Hearings