BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

ELK GROVE UNIFIED SCHOOL DISTRICT, TWIN RIVERS UNIFIED SCHOOL DISTRICT, AND HERITAGE PEAK CHARTER SCHOOL.

OAH CASE NUMBER 2023081036

# ORDER DETERMINING DUE PROCESS COMPLAINT INSUFFICIENT

SEPTEMBER 12, 2023

On August 25, 2023, Parent on behalf of Student, filed a due process hearing request, called a complaint, with the Office of Administrative Hearings, called OAH, naming Heritage Peak Charter School, called Heritage Peak, Elk Grove Unified School District, and Twin Rivers Unified School District. On September 8, 2023, Heritage Peak filed a notice of insufficiency as to the complaint requesting that the entire complaint be deemed insufficient.

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).

## HERITAGE PEAK FILED A TIMELY NOTICE OF INSUFFICIENCY

The complaint is deemed sufficient unless a party notifies OAH 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).) Heritage Peak filed its notice of insufficiency within 15 days of receiving the complaint. Thus, Heritage Peak timely filed a notice of insufficiency.

## STUDENT'S COMPLAINT IS INSUFFICIENT IN ITS ENTIREITY

Heritage Peak asserts that Student's complaint is insufficient because:

- the issues failed to identify which respondent is responsible for the issues;
- the issues are unclear; and
- the issues fall outside the statute of limitations without any supportable facts pled supporting extending the statutory time frame.

For all these reasons, Heritage Peak argues that the complaint lacks sufficient information to put Heritage Peak on notice as to what is being alleged.

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.]; *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.)

## STUDENT FAILED TO DESIGNATE AT WHAT TIME EACH RESPONDENT WAS RESPONSIBLE FOR FAPE DURING 2019 AND 2020.

Student named three respondents and asserted incoherent and broad allegations against respondents. Additionally, Student failed to delineate specific time periods of any of the respondent's responsibility for a free appropriate public education, called FAPE. Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to "the public agency involved in any decisions regarding a pupil." (Ed. Code, § 56502, subd. (a).) A "public agency" is

defined as "a school district, county office of education, special education local plan area, a nonprofit public charter school that is not otherwise included as a local educational agency, or any other public agency . . . providing special education or related services to individuals with exceptional needs." (Ed. Code, §§ 56500 and 56028.5.)

Unlike a school district, a charter school's FAPE obligation turns on attendance, not residency or enrollment. Normally, a minor student attends the public school of the parents' residence. (Ed. Code, § 48200.) A school district is responsible for providing a FAPE to all eligible students between the ages of six and eighteen whose parent or legal guardian resides within the jurisdictional boundaries of the school district, subject to several specified exceptions. (*Union School District v. Smith* (9th Cir.1994) 15 F.3d 1519, 1525, fn. 1.)

Conversely, a charter school is one "to which parents choose to send their children." (20 U.S.C. § 7221i(2)(H).) Thus, a public charter school does not admit students by residency; it admits only volunteers. (Ed. Code, § 47605, subd. (d) Thus, unlike school districts whose obligations toward children with disabilities is tied to parents' residency, a charter school's obligation relies on the choice of parents to send student to a charter school, and student's attendance. (Parent on Behalf of Student v. Santa Clara County Office of Education, Discovery Charter School II, and Sunnyvale School District , (2020) OAH case number 2019090001.)

Here, Student provides no facts in the complaint as to which respondent is responsible for which period, making it impossible for respondents to know what is being alleged against them, as the respondents cannot simultaneously be responsible for Student's FAPE during 2019 and 2020. Since Student failed to distinguish any period of responsibly in any of its issues as to any respondent, the complaint is overly broad,

unclear, confusing, and insufficiently pled. It failed to provide respondents the required notice of a description of the problem to prepare for mediation, due process hearing, and defend itself in this matter. Accordingly, this flaw renders Student's complaint insufficiently pled in its entirety.

## STUDENT'S ISSUES ARE UNCLEAR.

Student's complaint consists of over two pages of writing without delineating any specific issues or allegations but consists of a stream of consciousness of various laws and broad grievances against the respondents collectively. Thus, the complaint lacks any articulable issues pleading specific denials of FAPE, how many issues are plead, and any supporting facts specific to any issues, to put the respondents on notice of the description of the problem to prepare for this matter. It further refers to the period at issue as 2019 and 2020 but failed to make any assertions regarding when Parent knew or should have known about the alleged actions that forms the basis of the complaint or any exceptions to the two-year statute of limitations. Given the lack of factual support and the confusing and unclear nature of Student's allegations, the complaint lacks sufficient information for the respondents to participate in resolution, mediation, due process hearing, or to defend itself. Accordingly, Student's complaint is insufficiently pled in its entirety.

## 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. Student's complaint is insufficiently pled under section title 20 United States Code 1415(c)(2)(D).
2. Student is permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).
3. The amended complaint must comply with the requirements of title 20 U.S.C. section 1415(b)(7)(A)(ii) and must 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.

IT IS SO ORDERED.

Cynthia Fritz

Cynthia Fritz
Administrative Law Judge
Office of Administrative Hearings