BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

BONITA UNIFIED SCHOOL DISTRICT AND EAST SAN GABRIEL VALLEY SELPA.

OAH CASE NUMBER 2023040102

ORDER DETERMINING THE DUE PROCESS COMPLAINT IS SUFFICIENT IN PART

APRIL 11, 2023

On April 3, 2023, Parent on behalf of Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Bonita Unified School District and East San Gabriel Valley Special Education Local Plan Area. OAH deemed that Student's complaint contained expedited and non-expedited issues for hearing. On April 10, 2023, East San Gabriel SELPA filed a Notice of Insufficiency, called NOI, 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).

Title 20 United States Code section 1415(k)(3) permits a party to request an expedited hearing for specific reasons. Specifically, an expedited hearing can be requested to appeal a disciplinary change of placement, such as placement in an alternative education setting or a manifestation determination regarding student conduct. This section requires an expedited hearing start within 20 school days from the hearing request. There is no provision for expedited hearings under section 1415(k) to test the complaint's sufficiency. Indeed, there is insufficient time to complete the NOI process in expedited hearings. Thus, any expedited issue cannot accommodate challenges to the sufficiency of pleading afforded to non-expedited due process hearing requests.

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 Issue D alleges a denial of a free appropriate public education, called FAPE, based on respondents' removal of Student from the classroom in excess of 10 days, which Student alleges resulted in a change of placement. OAH determined Student's complaint raises a claim under 20 U.S.C. 1415(k)(3) and is entitled to an expedited hearing. At the expedited prehearing conference, Student may clarify whether the allegation in Issue D intended to raise an expedited claim, and the administrative law judge will make the determination. Accordingly, if Issue D is subject to an expedited due process hearing, Issue D is exempt from the determination of sufficiency process as explained above.

Student's Issue A alleges respondents denied him a FAPE by failing to meet their child find duty and failing to assess Student in all areas of suspected disability. Issue B

alleges respondents denied Student a FAPE by failing to offer a program to meet his unique needs and that were reasonably calculated to provide meaningful educational benefit. In Issue C Student alleges respondents denied him a FAPE by failing to offer behavior intervention services. Student's Issue E alleges respondents denied him a FAPE by failing to implement the May 31, 2022 IEP. And Issue F alleges respondents denied Student a FAPE by failing to provide prior written notice regarding the change in DIS counseling services for the 2022-2023 school year. East San Gabriel SELPA claims the complaint neither contains any allegations that East San Gabriel SELPA was a public agency responsible for Student's education during the time relevant to the complaint, nor any allegations specific to it.

As to Issues A, B, C, E, and F, the non-expedited claims in Student's complaint, are insufficiently pled as to respondent East San Gabriel SELPA. Student's complaint fails to allege sufficient facts to provide East San Gabriel SELPA an awareness and understanding of the issues forming the basis of the complaint. Additionally, if Student proceeds on Issue D as a non-expedited claim, it is insufficiently pled for the same reasons.

ORDER

1. East San Gabriel Valley SELPA's Notice of Insufficiency to any expedited claims is denied.
2. Student's non-expedited issues in the complaint, Issues A, B, C, E, and F, are insufficiently pled under section title 20 United States Code 1415(c)(2)(D), as they relate to respondent East San Gabriel Valley SELPA. Student's Issue D, if pled as a non-expedited issue, is also insufficiently pled as to respondent East San Gabriel Valley SELPA.

3. East San Gabriel Valley SELPA's NOI as to Issue D is denied because this is an expedited issue in the complaint.
4. Student must be permitted to file an amended complaint as to the non-expedited issues under title 20 United States Code section 1415(c)(2)(E)(i)(II).
5. The amended non-expedited 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.
6. If Student fails to file a timely amended non-expedited complaint, the non-expedited claims in the complaint will be dismissed as to East San Gabriel Valley SELPA.
7. All dates previously set in this matter remain as scheduled.

IT IS SO ORDERED.

Marlo Nisperos

Marlo Nisperos
Administrative Law Judge
Office of Administrative Hearings