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. 2014010618 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On January 17, 2014, Student's parent on behalf of Student (Student) filed a due process hearing request[1] (complaint) naming the Elk Grove Unified School District (District).

On February 3, 2013, the District filed a notice of insufficiency (NOI) 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.[2] 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 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 (FAPE) 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.[3] These requirements prevent vague and confusing complaints, and promote fairness by providing the

[1] A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

[2] 20 U.S.C. § 1415(b) & (c).

[3] 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.[4]

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint."[5] 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.[6] Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.[7]

DISCUSSION

The facts alleged in Student's complaint are sufficient to put the District on notice of the issues forming the basis of the complaint. Student's first issue alleges that the District failed to hold a timely and proper 30-day individualized education program (IEP) meeting, despite parental request for one. Student also alleges that the District never provided a proper Spanish language interpreter at meetings with Student's parent.

Student's second issue alleges that the District did not provide the occupational therapy and counseling services called for in Student's IEP.

The third issue alleges that the District placed Student in the wrong grade when he transferred into the District.

Those three issues are sufficient to put the District on notice as to the basis for Student's complaint.

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[4] See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

[5] Sen. Rep. No. 108-185, *supra*, at p. 34.

[6] *Alexandra R. v. Brookline School Dist*. (D.N.H., Sept. 10, 2009, No. 06-cv-0215-JL) 2009 WL 2957991 at p.3 [nonpub. opn.]; *Escambia County Board 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, No. 8:04CV2657T24EAJ) 2005 WL 2850076 at p. 3[nonpub. opn.] ; but cf. *M.S.-G. v. Lenape Regional High School Dist.* (3d Cir. 2009) 306 Fed.Appx. 772, at p. 3[nonpub. opn.].

[7] Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed.Reg. 46540-46541, 46699 (Aug. 14, 2006).

The District's NOI contends that Student's complaint is confusing. For example, the District refers to an issue entitled "Fault of IEP." However, there is no issue with that title in the English version of the complaint on file with OAH. Based on that assertion and other statements in the NOI, it appears that the District's concerns regarding the complaint may arise from the District's translation of the complaint rather than the substantive contents of the English version of the complaint on file with OAH. [8]

The District also objects to the proposed resolutions set forth in the complaint on the basis that some of them are vague. A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (20 U.S.C. §1415(b)(7)(A)(ii)(IV).)

A review of the complaint shows that Student has alleged appropriate proposed resolutions (for example, Student seeks an order requiring the District to hold an IEP meeting). Any vagueness in some of the other proposed resolutions can be addressed during the prehearing conference. There is no need to delay this matter to require Student to amend the complaint.

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.

Dated: February 5, 2014

/s/
SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings

8 If the District wishes to obtain a copy of the English version of the document on file with OAH, the District should contact the Sacramento OAH office.