BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

ENTERPRISE ELEMENTARY SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NUMBER 2021020664

ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

APRIL 6, 2021

On February 18, 2021, Enterprise Elementary School District filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Student as respondent. On March 22, 2021, OAH granted Enterprise's motion to amend its complaint. On April 2, 2021, Student timely filed a notice of insufficiency as to Issues One and Two of the amended complaint. Enterprise filed its opposition to Student's notice of insufficiency on April 6, 2021.

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

Enterprise's amended Issue One seeks a determination that its February 24, 2020 IEP is an offer of FAPE such that Enterprise may implement it unconditionally. In its notice, Student alleges Issue One of Enterprise's amended complaint is insufficiently pled because Parent has not yet consented to the initial IEP. Student argues that, pursuant to 34 C.F.R. § 300.300(b)(3)(i), Enterprise may not seek a ruling that it may provide special education services to Student.

Enterprise's Issue One relates to a proposal regarding FAPE. Issue One specifically identifies the IEP at issue. It also identifies Enterprise's proposed resolution, namely, to implement the IEP unconditionally. Essentially, Student argues that OAH lacks jurisdiction over Issue One, and therefore, the issue should be deemed insufficiently pled. That is not the standard, however, for determining whether an issue is sufficiently pled. Here, Student is on notice as to the basis of Enterprise's claim sufficiently to permit Student to form a response and participate in a resolution session and mediation. Whether Parent consented to implementation of the February 24, 2020 IEP is a question of fact that is properly set for hearing.

Enterprise's amended Issue Two essentially asks whether Enterprise may conduct a health and medical assessment of Student without restrictions on Enterprise's ability to communicate with Student's doctors. Student alleges Issue Two of the amended complaint is insufficiently pled because Enterprise has not identified any restriction or condition on communicating with Student's doctors.

Issue Two relates to the evaluation of Student. Issue Two identifies what type of evaluation Enterprise seeks to conduct. It identifies a proposed resolution, namely, unrestricted communication with Student's doctors for the purposes of evaluating Student. Further, Enterprise has alleged the specific condition on communication in its complaint, namely, that Parent has required all communication between Enterprise and Student's doctors to be in writing. Issue Two is sufficiently pled to put Student on notice as to the basis of Enterprise's claim and to permit Student to form a response and participate in a resolution session and mediation.

Student's notice of insufficiency concludes that both Issues One and Two should be dismissed. The present motion is a notice of insufficiency and not a motion to dismiss. Accordingly, a request for issue dismissal will not be addressed here.

Enterprise's Issues One and Two are sufficiently pled.

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.

IT IS SO ORDERED.

Claire Yazigi

Claire Yazigi
Administrative Law Judge
Office of Administrative Hearings