BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

ORCUTT UNION SCHOOL DISTRICT.

OAH CASE NUMBER 2023010165

# ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

JANUARY 25, 2023

On January 6, 2023, Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Orcutt Union School District. On January 18, 2023, Orcutt filed a notice of insufficiency as to the complaint.

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.)

Student's complaint alleges six issues, and certain factual allegations which, when read together, provide an awareness and understanding of the issues forming the basis of the complaint.

Student sufficiently describes the alleged problems relating to the proposed changes or refusals to change Student's educational placement, or the provision of a free appropriate public education to Student. The complaint alleges facts sufficient to allow Orcutt to know how to prepare for the hearing and how to participate in resolution session and mediation.

Orcutt can easily determine individualized education programs, or IEPs, at issue by reviewing Student's records. As the complaint does not allege circumvention of the statute of limitations, Orcutt can surmise the claims cover the two years prior to the complaint's filing and review IEPs during that time frame. Moreover, the Administrative Law Judge clarifies issues with the parties during the prehearing conference. At that time, IEP and other dates will be identified in particularity. While it may be preferable to allege IEP and other dates in Student's complaint, such pleading is not required, where other facts are pled, for a complaint to be deemed sufficient.

Issue One alleges Orcutt denied Student a FAPE by failing to meaningfully consider his request to have his applied behavior analysis treatment, elsewhere called therapist, accompany Student at school, thereby preventing meaningful parent participation or predetermining that Orcutt would deny the request. Whether Student or Parent is allowed to determine Orcutt's personnel issues is a question of law and does not make the complaint insufficient. Issue One is sufficiently pled to put Orcutt on notice of the basis of Student's claim.

Issue Two alleges Orcutt denied Student a FAPE by denying Parent's right to participate in the decision making process by refusing to allow her to determine who would provide Student's applied behavior analysis at school. Whether Parent is allowed to determine personnel issues is a question of law and does not make the complaint

insufficient. Issue Two is sufficiently pled to put Orcutt on notice of the basis of Student's claim.

Issue Three alleges Orcutt denied Student a FAPE by failing to consider or offer Student placement in his least restrictive environment. The facts allege an offer in an inclusion class outside of Student's neighborhood school, rather than placement in a regular class at his neighborhood school. Issue Three is sufficiently pled to put Orcutt on notice of the basis of Student's claim.

Issue Four alleges Orcutt denied Student a FAPE by failing to offer an IEP designed to develop or restore, to the maximum extent practicable, Student's functioning that meet all criteria of state and federal law for medically necessary behavioral health services. Whether the law required Orcutt to offer medically necessary behavioral health services is a legal question, not considered when determining the sufficiency of a complaint. Issue Four is sufficiently pled to put Orcutt on notice of the basis of Student's claim.

Issue Five succinctly alleges Orcutt denied Student a FAPE by failing to provide prior written notice regarding the refusal to allow Student's privately funded applied behavior analysis at school and the offer of an inclusion classroom. Issue Five is sufficiently pled to put Orcutt on notice of the basis of Student's claim.

Issue Six succinctly alleges Orcutt denied Student a FAPE by predetermining the refusal to allow Student in-home services during periods of distance learning. Issue Six is sufficiently pled to put Orcutt on notice of the basis of Student's claim.

Based upon the foregoing, OAH orders as follows:

1. Student's complaint is sufficient under section title 20 United States Code 1415(b)(7)(A)(ii).
2. All prehearing conference and due process hearing dates in this matter are confirmed.

IT IS SO ORDERED.

Cole Dalton

Cole Dalton
Administrative Law Judge
Office of Administrative Hearings