BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

LAKE TAHOE UNIFIED SCHOOL DISTRICT AND

TAHOE/ALPINE SELPA.

OAH CASE NUMBER 2021040552

# ORDER FINDING COMPLAINT SUFFICIENTLY PLED AGAINST LAKE TAHOE, AND INSUFFICIENTLY PLED AGAINST TAHOE/ALPINE SELPA

APRIL 27, 2021

On April 08, 2021, Parent on behalf of Student filed a due process hearing request, called a complaint, with the Office of Administrative Hearings, referred to as OAH. The complaint named Lake Tahoe Unified School District and Tahoe/Alpine Special Education Local Plan Area. On April 23, 2021, Lake Tahoe and Tahoe/Alpine filed a notice of sufficiency 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).

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, or FAPE; (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 alleges 46 claims, numbered 1A through 1VV, against Lake Tahoe and Tahoe/Alpine. Generally, the claims allege that Lake Tahoe failed to timely and adequately assess Student in all areas of suspected disability, and failed to act on Parent's requests for assessments or modifications to Student's individualized education program, or IEP. They also allege that Lake Tahoe failed to offer Student a FAPE, or to implement Student's IEP, particularly during the COVID-19 pandemic.

All claims are limited to the 2019-2020 and 2020-2021 school years, and each claim specifies a particular action or inaction that Student contends was a procedural or substantive violation of the IDEA over the past two years. Many of the claims are duplicative or overlap, but the 29-page complaint offers extensive detail regarding the school district's alleged conduct. The complaint is rambling and sometimes difficult to follow, but Parent is not a legal professional and pleadings must be liberally construed.

The facts alleged in Student's complaint are sufficient as pled against Lake Tahoe. It identifies the issues and adequate facts about the problem to permit Lake Tahoe to respond and participate in a resolution session and mediation.

As to Tahoe/Alpine, Student alleges no facts regarding action or inaction by Tahoe/Alpine that denied Student a FAPE. The complaint does little more than make a broad statement that all claims against Lake Tahoe are also alleged against Tahoe/Alpine, and assert at various points that Tahoe/Alpine provides little to no benefit to special education students within its SELPA boundaries.

The facts alleged in Student's complaint against Tahoe/Alpine are insufficient. Student fails to identify the issues and adequate facts about the problems to permit Tahoe/Alpine to respond and participate in a resolution session and mediation.

Therefore, Student's statement of the 46 claims is sufficient as to Lake Tahoe only.

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. Issues 1A through 1VV in Student's complaint are sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii), as to Lake Tahoe Unified School District only.
2. Issues 1A through 1VV of Student's complaint are insufficiently pled under title 20 United States Code section 1415(c)(2)(D) as to Tahoe/Alpine SELPA.
3. Student will be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).
4. The amended complaint shall comply with the requirements of title 20 U.S.C. section 1415(b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order. The filing of an amended complaint will restart the applicable timelines for a due process hearing.
5. If Student fails to file a timely amended complaint, Tahoe/Alpine SELPA will be dismissed as a party and the hearing shall proceed only on Issues 1A through 1VV of Student's complaint as against Lake Tahoe Unified School District only.

IT IS SO ORDERED.

*Alexa Hohensee*

Alexa Hohensee
Administrative Law Judge
Office of Administrative Hearings