

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

WHEATLAND UNION HIGH SCHOOL
DISTRICT.

OAH Case No. 2016030314

ORDER DETERMINING COMPLAINT
SUFFICIENT

On March 04, 2016, Student filed a Due Process Hearing Request¹ (complaint) with the Office of Administrative Hearings naming Wheatland Union High School District. On March 14, 2016, Wheatland timely filed a Notice of Insufficiency as to Student's complaint. For the reasons discussed below, the NOI is denied.

APPLICABLE LAW

a. *Expedited claims.*

As a preliminary matter, District's NOI is inapplicable to Parent's appeal of District's failure to hold a manifestation determination before suspending or expelling Student because the expedited hearing schedule does not accommodate challenges to the sufficiency of pleadings afforded to non-expedited due process hearing requests. (71 Fed. Reg. 46,725 (2006); 52 IDELR 231 (OSERS 2009).) Title 20 United States Code section 1415(k)(3) permits a party to request an expedited hearing to appeal a decision regarding 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 to occur within 20 school days of the date the hearing is requested. There is no provision similar to that in title 20 United States Code section 1415(c)(2)(A) for testing the sufficiency of a request for an expedited hearing pursuant to section 1415(k). Indeed, there is insufficient time to complete the NOI process in expedited hearings.

Student's complaint alleges District suspended or expelled Student for more than one month because of alleged behaviors, despite Parents' numerous requests over several years that District assess Student and address his attention deficit disorder. Student seeks his return to school during the pendency of this matter. This claim falls under title 20 section

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 U.S.C. section 1415(b)(7)(A).

1415(k)(5)(3) and requires an expedited hearing over the disciplinary change of placement. Accordingly, District's NOI as to Student's expedited claims is denied. The expedited hearing shall proceed as calendared.

b. *Non-expedited claims.*

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint. (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 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 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. (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

The facts alleged in Student's complaint are sufficient to put District on notice of the issues forming the basis of the complaint. Student's complaint identifies specific issues, including child find, failure to assess and failure to offer Student a FAPE, and supports them with facts. To the extent Student raises claims District argues are outside of OAH jurisdiction, District may file an appropriate motion. A notice of insufficiency does not address jurisdictional issues.

The non-expedited claims in Student's complaint are sufficient to permit District to respond to the complaint and participate in a resolution session, mediation and prepare for hearing. Student's complaint includes proposed resolutions, which are sufficient.

ORDER

1. District's Notice of Insufficiency as to the expedited claims is denied. The expedited hearing shall proceed as calendared.
2. The complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
3. All non-expedited mediation, prehearing conference, and hearing dates in this matter are confirmed.

DATE: March 16, 2016

DocuSigned by:

Adrienne L. Krikorian

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ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings