

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

GUERNEVILLE ELEMENTARY
SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2014050324

ORDER PARTIALLY GRANTING
NOTICE OF INSUFFICIENCY AND
DISMISSING “REDWOOD
PEDIATRICS” ON OAH’S MOTION

On May 5, 2014 Guerneville Elementary School District (District) filed a Due Process Hearing Request¹ (complaint) naming Parents on Student’s behalf (Parents) and Redwood Pediatrics. On May 13, 2014, Parents timely filed a Notice of Insufficiency (NOI) as to District’s complaint. For the reasons discussed below, the NOI is partially granted and District will be permitted leave to amend. “Redwood Pediatrics” is dismissed as a party on OAH’s motion.

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

District’s complaint alleges Student is 7 years old in the first grade at Guerneville Elementary School. The complaint does not identify Student’s eligibility category. The complaint alleges three issues, all of which seek an order compelling Parents to attend an individualized education program (IEP) team meeting on May 15 or May 27, 2014.

Issue One of the complaint alleges that Parents have requested an independent educational evaluation, which is “of concern” to District. The complaint incorporates a letter from Parents dated April 14, 2014, in which they explain that that District refused a requested Educationally Related Mental Health Screening (ERMHS) without explanation and Parents therefore elected to privately assess Student and seek reimbursement from District. Accordingly, Issue One is whether District denied Student a free appropriate public education (FAPE) by refusing to conduct an ERMHS such that Student is entitled to an independent educational evaluation in the area of mental health at public expense. Issue One is sufficiently pleaded to put Parents on notice of the claim to respond to the complaint, and to prepare for and participate in mediation and a due process hearing.

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).

Issue Two alleges that Parents disagree with Student's IEP team recommendation that occupational therapy services should be ceased. Although the complaint does not identify which IEP is at issue, one can infer from the complaint that Issue Two is whether District may terminate occupational therapy services for Student despite Parents' objections. Accordingly, Issue Two is sufficiently pleaded to put Parents on notice of the issue to respond to the complaint, and to participate in mediation and a hearing.

Issue Three merely refers to an attachment, which is an April 14, 2014 letter from Parents responding to an April 3, 2014 letter from District. The letter raises a number of concerns by Parents pertaining to an unspecified IEP, but does not specifically identify an issue raised by District that relates to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a FAPE to Student. There is nothing in the description of this issue that makes clear what District is seeking to achieve through due process. Accordingly, this issue is insufficient and District will be granted leave to amend.

Parents contend in their NOI that they do not understand why Redwood Pediatrics is named as a party, or whether Parents are parties. The complaint is clear that Parents are named parties to this due process hearing request. As to "Redwood Pediatrics," they are dismissed on OAH's own motion. Due process hearings are limited to students, their parent or guardian, and "the public agency involved in any decisions regarding the pupil." (See Ed. Code, § 56501, subd. (a).) A private therapeutic practice, while a possible witness, is not a proper party to a due process hearing.

As for District's resolutions, while the District seeks parental attendance at an IEP team meeting on dates that pre-date any due process hearing that would take place in this matter, one can infer that, in addition to those resolutions described above, District is seeking an order compelling Parents to attend an IEP team meeting at some date in the future. The resolutions are sufficient.

ORDER

1. Issues One and Two of District's complaint are sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).
2. Issue Three of District's complaint is insufficiently pled under Title 20 United States Code section 1415(c)(2)(D).
3. District shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).⁸

⁸ The filing of an amended complaint will restart the applicable timelines for a due process hearing.

4. The amended complaint shall comply with the requirements of Title 20 United States Code section 1415 (b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.

5. If District fails to file a timely amended complaint, the hearing shall proceed only on Issues One and Two in District's complaint.

6. "Redwood Pediatrics" is not a proper party and is dismissed. Their name shall not be included on any further filings in this matter.

DATE: May 14, 2014

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings