BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Matter of: | |
| PARENT ON BEHALF OF STUDENT, | OAH Case No. 2017100937 |
| v. | ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT |
| GOLETA UNIFIED SCHOOL DISTRICT. | |

On October 18, 2017, Student filed a due process hearing request[1] (complaint) with the Office of Administrative Hearings naming Goleta Unified School District. On November 2, Goleta filed a notice of insufficiency as to Student's complaint.

## APPLICABLE LAW

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).

The complaint is deemed sufficient unless a party notifies the Office of Administrative Hearings and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements. (20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).)

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.)

[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).

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 Individuals with Disabilities Education Act 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

OAH received Student's complaint at 8:57 p.m. on October 17, 2017. When OAH receives a pleading after 5:00 p.m. on a business day, during the weekend, or on a holiday, it is deemed filed the following business day. Therefore, Student's complaint is deemed filed with OAH on October 18, 2017.

OAH received Goleta's notice of insufficiency at 5:03 p.m., on November 1, 2017. Therefore, the notice of insufficiency is deemed filed on November 2, 2017. In its notice of insufficiency, Goleta states that it received Student's complaint on October 17, 2017, which makes Goleta's notice of insufficiency untimely, since November 2, 2017, is more than 15 days after it received Student's complaint. Therefore, the notice of insufficiency was not filed within the statutorily required timeline and Student's complaint is deemed sufficient.

However, in an abundance of caution, the undersigned ALJ has reviewed the facts alleged in Student's, complaint and independently found it to be sufficient. The complaint was filed on behalf of Student by his legal guardians. In the complaint, Student claims that in 2012, Goleta removed Student from a general education classroom, placed him in a special day classroom, and had his one-to-one service aide removed. Goleta now claims that Guardians do not have standing to file the complaint and allege any violations of the Idea that occurred prior to February 2017, which is when Guardians were appointed by the court. Goleta is incorrect in claiming Guardians lack standing to file on Student's behalf alleging actions by Goleta that occurred prior to the guardianship being granted. Guardians are acting on Student's behalf, not on their own behalf. Following Goleta's argument to its natural conclusion, any child who is removed from a parent and subsequently placed in foster care would lose the right to complain about denial of a FAPE by a school district prior to removal from a parent's custody, and this is not the law.

Goleta also claims that the complaint is insufficient because it contends Student was denied appropriate placement by Goleta prior to October 19, 2015, which is when the two year statute of limitations in special education cases began to run, and that Goleta "misrepresented" Student's placement to Guardians at this time. (Ed. Code § 56505, subd. (l).) Student correctly states in his opposition, that a party can raise the statute of limitations as an affirmative defense at hearing, and the matter can then be decided by the ALJ hearing the case, based on the evidence presented by both parties. Whether the facts alleged by Student in the complaint are true, and whether they constitute sufficient grounds to extend the statute of limitations, is a matter to be decided by the ALJ hearing the case. Therefore, Goleta's claim that the complaint is insufficient in this regard is incorrect. Student's allegations in his complaint are sufficient to put Goleta on notice of the issues forming the basis of the complaint, and the complaint identifies the issues and contains adequate related facts about the problem to permit Goleta to respond to the complaint and participate in a resolution session and mediation.

ORDER

1. The complaint is deemed sufficient under title 20 United States Code section 1415(c)(2)(C) and Education Code section 56502, subdivision (d)(1).

2 The complaint is also 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.

DATE: November 6, 2017

DocuSigned by:

Rebecca Freie

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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings