BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LONG BEACH UNIFIED SCHOOL DISTRICT .	OAH Case No. 2018100105 ORDER DETERMINING COMPLAINT SUFFICIENT

On October 1, 2018, Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming Long Beach Unified School District. On October 19, 2018, Long Beach 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

[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).

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's complaint was filed on October 1, 2018. Student included a proof of service that he served Long Beach via U.S. Mail on October 1, 2018. Long Beach indicates in its NOI that it received Student's complaint on October 4, 2018. Long Beach's NOI was dated, filed with OAH, and served on October 19, 2018, which is more than 15 days after the complaint was filed, but not more than 15 days after Long Beach alleged it received Student's complaint. Therefore, Long Beach's NOI is deemed timely.

The facts alleged in Student's complaint are sufficient to put Long Beach on notice of the issue forming the basis of the complaint. Student alleges one issue, that FAPE is not being offered. Although Student is not specific in his statement about how FAPE is not being offered, the facts alleged in the complaint explain that he believes he requires a one-to-one aide. Student alleges he requested a one-to-one aide during the June 8, 2018 individualized education program team meeting but that request was denied. Student further alleges that he is passive and needs side by side help. Student also includes an allegation of abuse at the middle school during the 2017-2018 school year and that he believes he might be subjected to similar abuse at the high school he is supposed to attend for the 2018-2019 school year.

Long Beach argues Student's complaint is insufficient because is it riddled with inaccurate facts, alleges a bullying incident without describing when it occurred, and does not explain how Long Beach denied Student FAPE. The accuracy of the facts is a question for hearing. As for bullying, Student does not mention bullying; he states he was subjected to incidents of abuse and references a June 11, 2018 letter from a doctor regarding the abuse. Long Beach is correct that Student's issue statement is not specific, but it is clear from the facts presented that he is alleging a denial of FAPE due to Long Beach's failure to provide a

one-to-one aide. Student's complaint provides adequate related facts about the problem to permit Long Beach to respond to the complaint and participate in a resolution session and mediation. Therefore, Student's statement of the claim is sufficient.

Student's proposed resolutions request a one-to-one aide and an appropriate nonpublic school placement. A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (20 U.S.C. §1415(b)(7)(A)(ii)(IV).) Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

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. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

DATE: October 26, 2018

DocuSigned by:
Linda Johnson
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LINDA JOHNSON
Administrative Law Judge
Office of Administrative Hearings