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. 2018110279 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On October 31, 2018, Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming the Long Beach Unified School District. On November 14, 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).

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

[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).

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 46540-46541, 46699.)

DISCUSSION

The facts alleged in Student's complaint are sufficient to put Long Beach on notice of the issues forming the basis of the complaint. Long Beach argues generally in its Notice of Insufficiency that Student alleges no facts "explaining the basis of his claims." That explanation is not required in an IDEA complaint; facts must simply be "facts relating to the problem . . ." 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).) Student's complaint sets forth numerous facts relating to the problem, as shown below.

Issues 1, 2, 7, 8, 12 and 13.

Student's complaint asserts 16 issues under the Individuals with Disabilities in Education Act, but they are repetitive because each issue is alleged separately concerning each of three individualized education programs offered in the school years 2016-2017, 2017-2018, and 2018-2019. Issues 1 and 2, read together, assert that Student is eligible for special education because of an orthopedic impairment (Spina Bifida/Myelomeningocele and Duane Syndrome) and that he is not ambulatory and is confined to a wheelchair. Those issues further allege that Student requires transportation to access his education but Long Beach has refused to provide it, citing a policy of its school board.

Long Beach argues that Student does not allege facts showing why he needs transportation to and from school "when he attends a school of choice." Since the complaint alleges that Student is non-mobile and in a wheelchair, it does assert sufficient facts to allow Long Beach to prepare its case concerning whether Student needs transportation. Long Beach inserts into that issue whether it can deny transportation when a student attends a "school of choice," but that is a legal question to be determined after hearing. The factual allegations in Issues 1 and 2 (and therefore the identical allegations in Issues 7, 8, 12 and 13) adequately notify Long Beach of the nature of the parties' dispute over transportation.

Issues 3, 9 and 14.

As to each of the three school years in question, Student asserts that Parents were denied meaningful participation in the IEP process, and he was denied educational

opportunity, because "[t]he District failed to offer a placement." The term "placement" is specifically defined in subsection (a) of section 3042 of Title 5 of the California Code of Regulations, so Long Beach is able in light of that definition to understand Student's allegations in Issues 3, 9 and 14. Those allegations adequately notify Long Beach of the nature of the parties' dispute over the existence of an offer of placement.

Issues 4, 5, 10, 11, 15 and 16.

As to each of the school years in question, Student makes a pair of allegations about alleged deficiencies in Long Beach's approach to his behavior. Issue 4 asserts that Student demonstrated maladaptive behaviors, including tantruming, and delayed social skills but was not offered appropriate behavior services. Issue 5 asserts that Long Beach failed to develop and offer appropriate goals in behavior and socialization. Taken together, those allegations (and the identical allegations in Issues 10, 11, 15 and 16) adequately notify Long Beach of the nature of the parties' dispute over Student's need for behavioral support and goals.

ORDER

1. The complaint is 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 19, 2018

DocuSigned by:
Charles Marson
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CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings