BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2015120595
v.	
BREA-OLINDA UNIFIED SCHOOL DISTRICT, NORTHEAST ORANGE COUNTY SELPA, AND ORANGE COUNTY DEPARTMENT OF EDUCATION.	ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT AS TO ORANGE COUNTY DEPARTMENT OF EDUCATION

On December 11, 2015, Parent on behalf of Student (Student) filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming Brea-Olinda Unified School District, Northeast Orange County SELPA, and Orange County Department of Education. On December 29, 2015, Orange County Department of Education (OCDE) 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

[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).

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 complaint was filed on December 11, 2015. OCDE did not receive Student's complaint until December 17, 2015. Thus, OCDE's Notice of Insufficiency filed December 29, 2015, is timely because it was filed within 15 days of the date OCDE received the complaint.

The complaint identifies Student as an 11 year old male, who lives within Brea-Olinda Unified School District boundaries and attends a non-public school. The detailed 46 page complaint alleges five issues. Each issue specifically alleges that Brea-Olinda violated the IDEA. None of the issues contain any allegations related to OCDE. The only factual allegation concerning OCDE is that OCDE was involved in securing a non-public school placement as offered in Student's last agreed upon individualized education program in June 2014. Thus, Student's complaint is insufficiently pled in that it fails to provide OCDE with the required notice of a description of the problem and the facts relating to the problem to put OCDE on notice as to the issues for hearing.

OAH granted Northeast Orange County SELPA's Notice of Insufficiency on similar grounds on December 22, 2015, and gave Student 14 days from the date of that Order within which to file an amended complaint if Student wishes to retain SELPA as a party. To provide clarity in the pleadings, a separate Order will issue modifying the December 22, 2015 Order to give Student the same deadline to amend Student's complaint as to either or both SELPA and OCDE.

ORDER

1. Student's complaint is insufficiently pled as to OCDE under section title 20 United States Code 1415(c)(2)(D).

2. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).[2]

3. The amended complaint shall comply with the requirements of title 20 U.S.C. section 1415(b)(7)(A)(ii), and shall be filed not later January 12, 2016.

4. If Student fails to file a timely amended complaint, OCDE will be dismissed and the Complaint will proceed as to the remaining parties.

DATE: December 30, 2015

/s/

MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings

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