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. 2016010654 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On February 8, 2016, the undersigned administrative law judge issued an order that found Student's complaint sufficient on the grounds that Long Beach Unified School District had not timely submitted its request that OAH determine that Student's request for due process (complaint), filed on January 20, 2016, insufficient. On February 9, 2016, Long Beach filed a pleading entitled "Request for Ruling on Notice of Insufficiency." The ALJ considers this to be a request for reconsideration of her order of February 8, 2016. Student did not file a response to either filing by Long Beach.

APPLICABLE LAW

Reconsideration

The Office of Administrative Hearings will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

Notice of Insufficiency

The named parties to a due process hearing request[1] have the right to challenge the sufficiency of the complaint. (20 U.S.C. § 1415(b) & (c).) The party filing the complaint is

[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).

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.)

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

Reconsideration

In the order of February 8, 2016, Student's complaint was found to be sufficient based on information that indicated Long Beach had submitted its notice of insufficiency after 5:00 p.m. on that date, and thus was untimely. With its request for reconsideration, Long Beach submitted a copy of the report generated by its fax machine and a declaration from the employee who faxed the notice of insufficiency on February 4, 2016, that showed the document was sent to OAH before 5:00 p.m., and thus was timely filed.

The ALJ has also spoken to the OAH special education staff, and has been informed that on the afternoon of February 4, 2016, the Department of General Services' main server went off-line. OAH is an agency that is part of the Department of General Services and when the server went off-line, OAH could not receive emails and faxes during that period of time. When the server was rebooted at approximately 5:50 p.m. that evening, all of the documents submitted to OAH via faxination were given the same time stamp recorded by OAH on the notice of insufficiency filed by Long Beach, which mistakenly showed that the notice of insufficiency was sent to OAH after 5:00 p.m., and was therefore untimely. Given this new information, Long Beach's motion for reconsideration is granted.

Notice of Insufficiency

On reconsideration it is determined that Long Beach's notice of insufficiency was timely filed with OAH. In light of this, it must now be determined if either or both of the issues raised in Student's complaint are sufficiently pled.

Student states two issues. The first issue alleges that Long Beach failed to offer Student a free appropriate public education in the least restrictive environment because an individualized education program dated July 24, 2015, offers her an appropriate placement, but fails to offer appropriate transportation. This issue is sufficiently pled, because it refers to a specific date the IEP was developed, and it is clear that Student is disputing the provision of transportation to her offered by Long Beach. No further facts are necessary to permit Long Beach to prepare for and participate in a resolution session, mediation, and a due process hearing.

Student's second issue alleges that Long beach "failed to offer appropriate speech and language therapy." This issue is not sufficiently pled. One cannot determine from this single sentence claim what period of time is covered for this issue, and what type, frequency and duration of speech and language therapy will meet Student's unique needs and provide educational benefit. As stated, there is insufficient information to permit Long Beach to prepare for and participate in a resolution session, mediation, and a due process hearing regarding this claim.

ORDER

1. Long Beach's motion for reconsideration is granted.

2. Based on reconsideration of Long Beach's notice of insufficiency, Student's complaint is sufficiently pled as to the first issue. The complaint is deemed sufficient under title 20 United States Code section 1415(c)(2)(C) and Education Code section 56502, subdivision (d)(1).

3. Student's complaint is insufficiently pled as to the second issue under title 20 United States Code 1415(c)(2)(D).

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

5. 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 than 14 days from the date of this order.

6. If Student fails to file a timely amended complaint, the matter will proceed only on the first issue, concerning transportation, on the dates currently set for mediation, prehearing conference and due process hearing.

IT IS SO ORDERED.

DATE: February 10, 2016

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Rebecca Freie
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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings

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