BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

DOWNEY UNIFIED SCHOOL DISTRICT

OAH CASE NUMBER 2019100193

ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On October 3, 2019, Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Downey Unified School District. On October 18, 2019, Downey Unified School District filed a Notice of Insufficiency as to the complaint.

APPLICABLE LAW

The named parties have the right to challenge the complaint's sufficiency. (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: (1) describes the problem relating to the proposed change regarding the Student's identification, evaluation, or educational placement, or

providing the Student a free appropriate public education; (2) includes facts about the problem; and (3) includes a proposed resolution 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

Downey asserts the complaint does not contain sufficient facts as to issue number one to allow it to respond in a resolution meeting or prepare its defense. Downey contends that there are no facts in the complaint that support the allegation regarding Student's language and speech services, therefore the complaint is

insufficient. Student's issue number one alleges Downey's failure to provide appropriate placement and services which has resulted in a failure to provide Student a free appropriate public education, often called a "FAPE". Student listed the following services that were allegedly inadequate: the current 1:1 aide is not well-trained enough to assist student, the placement is ill equipped to meet Student's needs, the Student is over-stimulated in this placement, and insufficient ABA therapy and Language and Speech have been provided.

Downey further argues that Student's issue number three fails to identify which IEP or timeframe is at issue and therefore is legally insufficient notice. Student's complaint alleges in issue number three that Downey denied student a FAPE by making a predetermined offer of placement and services. Student asserts that the denial of FAPE occurred when Downey added a weighted vest to the IEP accommodations/equipment without Parent's consent and this impeded Parent's opportunity to participate in the decision-making process regarding the FAPE and thereby denied Student a FAPE.

Downey claims that there are insufficient facts provided in Student's issue number four for the same reasons it noted for the other claims, reasoning that it was duplicative of issues one, two, and three. Student's issue number four alleges if Downey denied a FAPE, Student would be entitled to compensatory education. Student asserts that the evidence presented at hearing will show he did not make any meaningful academic or behavioral progress, which would demonstrate the denial of a FAPE and would result in Student's entitlement to compensatory education in the areas of Behavior Therapy, Language and Speech, and Tutoring/Academic Services.

The facts alleged in Student's complaint are sufficient. Student's complaint identifies the issues and adequate facts about the problem to permit Downey to respond and participate in a resolution session and mediation.

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.

IT IS SO ORDERED.

DATED: October 21, 2019

DocuSigned by:
Marlo Nisperos
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Marlo Nisperos
Administrative Law Judge
Office of Administrative Hearings