BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2018080961
v.	
LOS ANGELES UNIFIED SCHOOL DISTRICT.	ORDER FINDING COMPLAINT SUFFICIENTLY PLEADED

On August 23, 2018, Parent on behalf of Student filed a due process hearing request[1] (complaint) with the Office of Administrative Hearings naming Los Angeles Unified School District.

On October 2, 2018, Los Angeles filed a motion to dismiss, asserting in general that allegations in the complaint do not "focus" on violations of the Individuals with Disabilities Education Act (20 U.S.C. § 1400, et seq.) or on whether Los Angeles denied Student a free appropriate public education. As support for this argument, Los Angeles notes that Student seeks remedies, such as damages, that are not available under the IDEA. Los Angeles' motion attacks the sufficiency of Student's allegations as the basis for the assertion that OAH lacks jurisdiction, and accordingly, this motion will be treated as a notice of insufficiency.

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 OAH 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,

[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).

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

Student's complaint alleges at Issue 1 that: Student enrolled in a Los Angeles school; due to Student's behaviors in class and difficulties with classwork, Student's teacher told Parent that Student needed help; the teacher gave Parent an individualized education program packet to sign, without any explanation of special education or IEP's; Parent was told that Student had to attend a different school. As remedies, Parent requests that Student not be characterized as slow when he is smart, and that Los Angeles stop sending other agencies to Student's home. It alleges at Issue 2 that: after Parent made an appointment to speak with someone at school about special education, the school principal attempted to send Student to another school, because he was identified as a special education student and because he was a child of color. The complaint asks that the principal be fired. The complaint at Issue 3 alleges that Parent obtained an intradistrict permit for Student to attend another school, but when Student arrived, he was told that his class had no space for him. Student seeks pain and suffering due to this conduct. The complaint alleges at Issue 4 that Los Angeles refused to allow Student to attend its schools and as a result Student is being deprived of an education, for which Student seeks damages.

The facts alleged in Student's complaint are sufficient to put Los Angeles on notice of the issues forming the basis of the complaint. Chief among Student's complaints is that he is being identified as "slow" due to his race, and for purposes of removing him from the classroom rather than providing him with the educational services he needs. Although

Student seeks damages for pain and suffering, which are not available under the IDEA, under federal and state law, courts have broad equitable powers to remedy the failure of a school district to provide a FAPE to a disabled child. (20 U.S.C. § 1415(i)(1)(C)(iii); Ed. Code, § 56505, subd. (g); see *School Committee of the Town of Burlington, Massachusetts v. Dept. of Education* (1985) 471 U.S. 359, 369.) This broad equitable authority extends to an ALJ who hears and decides a special education administrative due process matter. (*Forest Grove School Dist. v. T.A.* (2009) 557 U.S. 230, 244, n. 11.)

Student's complaint identifies issues of eligibility for special education, appropriate services and placement, and loss of educational opportunity. It alleges adequate related facts about the problem to permit Los Angeles to respond to the complaint and participate in a resolution session and mediation.

Therefore, Student's statement of the four claims is sufficient.

In addition, District's attack on the "focus" of Student's complaint, or the adequacy of Student's allegations in identifying IDEA claims, was filed more than 15 days after Student's complaint was filed, and Los Angeles provided no explanation why it did not file a timely NOI. Therefore it was untimely and the motion is denied on that ground as well.

ORDER

1. The complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).

2. The complaint is also deemed sufficient under title 20 United States Code section 1415(c)(2)(C) and Education Code section 56502, subdivision (d)(1).

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

DATE: October 4, 2018

DocuSigned by:
Alexa Hohensee
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ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings