BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SAN DIEGUITO UNION HIGH SCHOOL DISTRICT.	OAH Case No. 2018021017 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On February 26, 2018, Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming San Dieguito Union High School District. On March 13, 2018, District 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).)

Electronic or facsimile service of a document, where such service is agreed upon between the parties, is complete at the time of transmission, but any period of notice and any right or duty to do any act or make any response within any period or on a date certain after service of the document, which time period or date is prescribed by statute or rule of court, shall be extended, after such transmission, by two court days, except in circumstances not relevant to this matter. (California Code of Civil Procedure, §§ 1010.6, subd. (4)(A) and 1013, subd. (e).)

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[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).

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

Student's complaint was filed on February 26, 2018. District's Notice of Insufficiency was filed and served on March 13, 2018, but does not state when District received Student's complaint. Student's proof of service of the complaint, signed under penalty of perjury, states that District was served on February 24, 2018, a Saturday. The proof of services provides that the parties agreed to facsimile service and that a courtesy copy of the complaint was electronically transmitted that same date. Because Student's complaint was served on a Saturday, two business days are added to the time by which District must have filed its Notice of Insufficiency. District's Notice of Insufficiency was due no later than March 13, 2018, and was timely filed.

The facts alleged in Student's complaint are sufficient to put the District on notice of the issues forming the basis of the complaint. Student's complaint identifies issues and adequate related facts about the problem to permit District to respond to the complaint.

Specifically, Student alleges that he has been displaying signs of emotional disturbance on and off school campus since at least June of 2017; that in September 2017, Father "voiced his unhappiness with the school" about its "failure to recognize S[tudent's]

emotional disturbance;" that District should stay expulsion proceedings to assess Student and develop an IEP. The complaint avers facts from March 2017 through the time of Student's suspension in January 2018, which put District on notice of Student's claim that he had a disability, that District should have assessed him, developed an IEP, and provided him with the disciplinary protections afforded by the IDEA to students with special needs. As noted in OAH's order partially granting District's motion to dismiss, greater specificity regarding the issues will be addressed at the prehearing conference scheduled for March 16, 2018.

Accordingly, Student's complaint is sufficient.

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: March 15, 2018

DocuSigned by:

COLE DALTON
Administrative Law Judge
Office of Administrative Hearings