BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

NORWALK-LA MIRADA UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021030530

ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

MARCH 24, 2021

On March 11, 2021, Parent on behalf of Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Norwalk-La Mirada Unified School District. On March 23, 2021, Norwalk-La Mirada Unified School District filed a combined Notice of Representation, Response to Complaint and Notice of Insufficiency. A response to a complaint and a notice of insufficiency are distinct pleadings and should be separately pled and filed. All prospective pleadings and motions in this matter should be filed as separate pleadings.

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

Norwalk-La Mirada argues Student's complaint lacks sufficient facts to meet minimal pleading requirements with respect to the allegation that Norwalk-La Mirada predetermined Student's offer of FAPE. The complaint contains one numbered issue, and several subparts. Student's complaint is supported by few facts and the pleading contains grammatical and organizational errors. However, the facts are sufficiently pled to put Norwalk-La Mirada on notice as to the basis of Student's claim.

Student identifies one numbered issue for hearing. Issue One alleges Norwalk-La Mirada Unified School District denied Student a free appropriate public education, FAPE in the January 27, 2021 individualized education program team meeting. The complaint's subparts allege Norwalk-La Mirada denied Student a FAPE by failing to offer Student one to one tutoring, failing to offer Student appropriate services to provide Student educational benefit and predetermining Student's offer of FAPE. The complaint asserts that Parent and Student's advocate argued at the January 27, 2021 IEP team meeting that Student required one to one tutoring in light of Student's regression and failure to make progress towards his academic goals. Norwalk-La Mirada Unified School District allegedly denied Student's request for a one to one tutor and issued a prior written notice on February 18, 2021.

The complaint seeks as a resolution to the dispute a one to one tutor for academic support in the areas of math and writing in twice weekly, 45-minute sessions. A complaint is required to include proposed resolutions to a problem, to the extent

known and available to the party at the time. (20 U.S.C. §1415(b)(7)(A)(ii)(IV).) Student has met the statutorily required standard regarding proposed resolutions.

Student's complaint identifies the issues and adequate facts about the problem to permit Norwalk-La Mirada to respond and participate in a resolution session and mediation. Therefore, Student's statement of the issue 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.

IT IS SO ORDERED.

Jennifer Kelly

Jennifer Kelly
Administrative Law Judge
Office of Administrative Hearings