BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. BAKERSFIELD CITY SCHOOL DISTRICT.	OAH Case No. 2018010646 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On January 18, 2018, Student filed a due process hearing request[1] (complaint) with the Office of Administrative Hearings naming Bakersfield City School District. On January 22, 2018, District timely filed a notice of insufficiency as to Student's complaint.[2]

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).)

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

[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).

[2] Student names Alameda Unified School District in the caption of his complaint. However, the contents of the complaint clearly indicate that Student's counsel intended the complaint to be against Bakersfield City School District, and OAH has opened this case accordingly.

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

District contends that Student's complaint is insufficient because it alleges claims beyond the statute of limitations, contains "unfounded" claims, does not allege with requisite specificity how Student's individualized education programs were inappropriately designed or how Student was not receiving a free appropriate public education, and fails to specify why Parent should have received an assessment plan. District argues that the complaint's formatting and redundancy renders the claims unclear.

District is correct that Student alleges in 53 pages what could have been alleged in 10, and that the redundancy of the complaint is tedious and difficult to follow. Student's claims are detailed over a period of 10 years, and include facts regarding alleged failures to provide Parent with procedural safeguards, adequate interpretation or timely translations, alleged failures to assess or obtain consent to assessment, and failure to offer Student an appropriate program. At page 35, Student begins to enumerate his claims, which are set out in bold and clearly numbered. Those claims are that District: (1) failed to provide Parent with procedural safeguards, appropriate interpreters, or translations of documents from 2010 through 2015; (2) failed to provide a translated September 25, 2015 IEP; (3) inappropriately removed services from Student's IEP; (4) committed procedural violations by failing to file for due process when Parent refused consent to the May 2012, October 2012, February 2016, September 2016, October 2017 and December 2017 IEP's and failing to provide Parent with an assessment plan for a September 2014 assessment; and (5) denied Student a FAPE during the 2015-2016 and 2017-2018 school years by failing to timely provide Parent with a

translated February 2016 IEP, failing to provide a well-trained interpreter at the IEP team meetings of February 2016 and October 2017, failing to provide Parent with a draft IEP five days prior to the December 2017 IEP team meeting, failing to present Parent with an assessment plan within 15 days of the October 2017 IEP team meeting, failing to appropriately design Student's February 2016, October 2017 and December 2017 IEP's, and failing to have Parent in attendance during part of the December 2017 IEP team meeting.

Student proposes resolutions at page 52, including requests for independent educational evaluations, compensatory education and orders that District provide trained interpreters and timely translations.

The facts alleged in Student's complaint are sufficient to put District on notice of the issues forming the basis of the complaint. Despite the complaint's unrelenting redundancy and recitation of eight years of factual allegations, Student's complaint identifies the issues and adequate related facts about each problem to permit District to respond to the complaint and participate in a resolution session and mediation.

A notice of insufficiency determines whether or not adequate notice is given. District's arguments that certain claims will not survive a statute of limitations challenge, or that various claims are unfounded, are not decided on a notice of insufficiency.

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: January 26, 2018

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