BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. VICTOR ELEMENTARY SCHOOL DISTRICT.	OAH Case No. 2017100188 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT AND SETTING MEDIATION, PREHEARING CONFERENCE, AND DUE PROCESS HEARING DATES FOR EXPEDITED CLAIM

On October 2, 2017, Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming Victor Elementary School District. On October 17, 2017, 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).

Title 20 United States Code section 1415(k)(3) permits a party to request an expedited hearing to appeal a decision regarding a disciplinary change of placement, such as placement in an alternative education setting or a manifestation determination regarding student conduct. This section requires an expedited hearing to occur within 20 school days of the date the hearing is requested. There is no provision similar to that in title 20 United States Code section 1415(c)(2)(A) for testing the sufficiency of a request for an expedited hearing pursuant to section 1415(k). Indeed, there is insufficient time to complete the NOI process in expedited hearings.

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 United States Code section 1415(b)(7)(A).

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 alleges he has been found eligible for special education and related services since April 2015. In March 2017, he was expelled from District during fifth grade. As a remedy, he seeks to be returned to his school of residence. Student appears to complain that he was improperly expelled from District, as he alleges that he was expelled and he requests to be returned to his school of residence. The issue as pleaded appears to be an expedited claim under title 20 United States Code section 1415(k)(3)(A) and 34 Code of Federal Regulations part 300.532(a) (2006). Expedited claims are not subject to an NOI.

An expedited due process hearing before OAH must occur within 20 school days of the date the complaint requesting the hearing is filed. (20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. § 300.532(c)(2).). Although Student did not identify his complaint as having both expedited and non-expedited claims, OAH understands Student's complaint to include an expedited claim disputing his expulsion and change of placement to the county continuation school program. Accordingly, mediation, prehearing conference, and due process hearing dates for the expedited claim will be set.

Student alleges he has attended San Bernardino County Superintendent Continuation School since on or about September 12, 2017. Student states the September 12, 2017 individualized education program specified that he would be in a general education placement 100 percent of the time and he would receive all his special education services within the general education classroom. Student alleges the IEP states that it is difficult for

him to keep up with the pace of the general education curriculum without support, that he is working below grade level in all academic skills, and contains a "suggestion" that Student requires a smaller and more supportive environment. As a remedy, Student requests at least three hours a day of resource support and an evaluation of whether "the placement" is appropriate. Student also alleges the September 12, 2017 IEP states he has exhibited inappropriate behavior and "an area of need is documented regarding peer interactions and coping skills," but the IEP did not contain any social/emotional goals. Student states the continuation school is exacerbating his anxiety and he has difficulty with the other students' behavior. As a remedy, Student requests a social skills group and weekly counseling. Student

Student alleges the September 12, 2017 IEP meeting did not include all required participants, specifically a school psychologist. He also alleges that there were no new assessments conducted, and specifically that there was not a functional behavior assessment. He further complains that the September 12, 2017 indicates no positive behavior interventions were implemented and no behavior intervention plan was implemented. Student does not request a remedy that appears specifically to relate to these alleged deficiencies.

In total, Student's factual allegations and proposed remedies state a claim that District denied him a free appropriate public education in the September 12, 2017 IEP in the following ways: 1) by failing to assess Student in all areas of suspected disability in preparation for the September 12, 2017 IEP team meeting, specifically behavior; 2) by failing to have all required members of an IEP team at the September 12, 2017 IEP team meeting, specifically a school psychologist; 3) by failing to develop goals in all areas of unique need, specifically social/emotional functioning; 4) by failing to offer an appropriate placement; and 5) by failing to offer appropriate related services, specifically sufficient specialized academic instruction through resource support; social skills group; and counseling.

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

Therefore, Student's statement of the claims 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 as to the non-expedited claims regarding a denial of FAPE

3. The following mediation, prehearing conference, and hearing dates are set for the expedited claim:

Mediation:	October 25, 2017 at 9:30 a.m..
Prehearing Conference:	October 27, 2017 at 10:00 a.m.
Due Process Hearing:	October 31[2] and November 1, 2017, and continuing day to day, Monday through Thursday as needed at the discretion of the ALJ. The hearing shall begin at 9:30 a.m. on the first day, and at 9:00 a.m. all other days, unless otherwise ordered.

DATE: October 19, 2017

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Kara Hatfield
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KARA HATFIELD
Administrative Law Judge
Office of Administrative Hearings

[2] According to District's online calendar for the 2017-2018 school year, school was not in session on October 9, 2017. Therefore, the twentieth school day after Student filed his complaint is October 31, 2017.