BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LONG BEACH UNIFIED SCHOOL DISTRICT .	OAH Case No. 2018051158 ORDER DETERMINING FIRST AMENDED COMPLAINT TO BE SUFFICIENT PLEADED

On May 25, 2018, Student filed a due process hearing request[1] (complaint) with the Office of Administrative Hearings naming Long Beach Unified School District. By Order dated June 7, 2018, the complaint was found insufficiently pleaded, and Student was granted leave to amend.

On June 21, 2018, Student timely filed an amended complaint with OAH naming District (first amended complaint).

On July 2, 2018, District timely filed 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).

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

[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).

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 original complaint was found insufficient because it alleged claims as legal conclusions without supporting facts of any kind.

Student's first amended complaint alleges at Issues Nos. 1, 2, 3, 4 5, 6 and 7 that Student was denied a FAPE in the IEP dated February 3, 2016, because: Student was exhibiting deficits in verbal and nonverbal communication and socialization, but District failed to assess Student in all areas of suspected disability prior to the February 3, 2016 IEP, particularly autism; District failed to design an IEP to address Student's disability of autism, particularly Student's deficits in social interaction, communication, attention, compliance, and repetitive and stereotypical behavior; the placement offered was not individualized or in the least restrictive environment; the services offered did not address Student's needs; the IEP offered insufficient speech therapy; the IEP offered insufficient occupational therapy to meet Student's mine motor and sensory processing needs, and the IEP failed to include appropriate goals in the areas of behavior, socialization, adaptive living skills, communication, academics, sensory processing and fine motor skills to address Student's educational needs. Student proposes remedies for all of the violations of FAPE alleged in the IEP at the end of the complaint, including a change in placement and services to address Student's needs. The allegations of Issues Nos. 1 through 7 describe the nature of the problems with the February 3, 2016 IEP, provide facts relating to the problems, and propose resolutions.

At Issues Nos. 8, 9, 10, 11, 12 and 13, Student incorporates the factual allegations from the earlier issues, and alleges in similar fashion that the January 19, 2017 IEP repeated the same flaws seen in the February 3, 2016 IEP, essentially a failure to address Student's educational needs arising from her autism, which were still present at the time of the

January 19, 2017 IEP, or new problems such as Student improperly touching others or their belongings, or demonstrating deficits in expressive language and articulation. The allegations of Issues Nos. 8 through 13 describe the nature of the problems with the January 19, 2017 IEP, provide facts relating to the problems.

Issues Nos. 14, 15, 16 and 17 alleged that Student was denied a FAPE in the December 19, 2017 IEP because: she continued to exhibit the problems alleged at Issues 1 and 2, but was not placed in the least restrictive environment; was not offered behavior services despite her behaviors impeding the learning of herself and others; was not offered sufficient speech therapy to address her communication deficits in receptive language, expressive language, articulation and receptive language; and appropriate goals to address her continuing needs were not developed or offered. The allegations of Issues Nos. 14 through 17 describe the nature of the problems with the December 19, 2017 IEP, provide facts relating to the problems.

The facts alleged in Student's first amended complaint are sufficient to put District on notice of the issues forming the basis of the complaint. Student's first amended 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 seventeen 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.

DATE: July 5, 2018

Alexa Hohensee

ALEXA J.HOHENSEE
Administrative Law Judge
Office of Administrative Hearings