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. 2018051105 ORDER DETERMINING STUDENT'S FIRST AMENDED COMPLAINT TO BE SUFFICIENT

On May 24, 2018, Parent on behalf of Student filed a request for due process hearing (complaint)[1] with the Office of Administrative Hearings naming Long Beach Unified School District. On June 4, 2018, District timely filed a Notice of Insufficiency as to Student's complaint. On June 8, 2018, OAH found Student's complaint to be insufficiently pled and gave Student 14 days to file an amended complaint.

On June 21, 2018, Student filed a first amended due process hearing request (complaint) with OAH naming District. On June 26, 2018, District timely filed a notice of insufficiency as to Student's first amended 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).

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

The first amended complaint alleges 21 issues, or problems. Each of the issues is related to District's alleged failure to find Student, who is now in sixth grade, eligible for special education prior to second grade in 2014, or to address Student's behaviors in the classroom since that time.[2]

Issue No. 1. Student alleges that despite teacher and administrator reports of Student's noncompliance, disruptive behavior and aggression since kindergarten, District failed to refer Student for assessment for special education eligibility until 2014, and therefore failed to meet its child find obligation. This issue contains description of the nature of the problem with sufficient related facts to provide District with an awareness and understanding of the issues forming the basis of the complaint.

Issues No. 2, 3, 4 and 5. Issue 2 alleges that Student was not offered appropriate behavior services in the IEP of February 6, 2014, despite demonstrating maladaptive behaviors and difficulty with social interactions. Issue 3 alleges that the general education curriculum was insufficient to address his academic needs, particularly in math and language arts, but Student was not offered appropriate academic support. Issue 4 alleges that the February 6, 2014 IEP did not contain goals to address identified areas of need. Issue 5 alleges that District committed a procedural violation by failing to have someone knowledgeable in behavior services attend the IEP team meeting, despite Student's history of

[2] Student alleges many claims outside of the statute of limitations, which are the subject of a concurrent motion to dismiss. The merits of District's motion to dismiss are analyzed in a separate order, and not addressed here.

maladaptive behaviors and difficulty with social interactions that would warrant behavior services in his IEP. These issues contain description of the nature of the problems with sufficient related facts to provide District with an awareness and understanding of the issues forming the basis of the complaint. The nature, frequency, duration and delivery model of the services that Student contends should have been offered, or the content of the goals that Student contends should have been written to address the delineated alleged areas of need, are a matter for proof at trial, and need not be alleged in minute detail for District to understand the gist of these claims.

Issues Nos. 6, 7, 8 and 9. Student's Issues 6, 7, 8 and 9 allege insufficiencies in the IEP dated January 27, 2015. Issue 6 alleges that Student was not offered appropriate behavior services, despite demonstrating maladaptive behaviors and difficulty with social interactions. Issue 7 alleges that the general education curriculum was insufficient to address his academic needs, particularly in math and language arts, but Student was not offered appropriate academic support. Issue 8 alleges that the IEP did not contain goals to address identified areas of need. Issue 9 alleges that District committed a procedural violation by failing to have someone knowledgeable in behavior services attend the IEP team meeting, despite Student's history of maladaptive behaviors and difficulty with social interactions that would warrant that such behavior services be added to his IEP. These issues contain description of the nature of the problems with sufficient related facts to provide District with an awareness and understanding of the issues forming the basis of the complaint. The nature, frequency, duration and delivery model of the services that Student contends should have been offered, or the content of the goals that Student contends should have been written to address the delineated alleged areas of need, are a matter for proof at trial, and need not be alleged in minute detail for District to gain an awareness of the nature of these claims.

Issues Nos. 10, 11, 12 and 13. Student's Issues 10, 11, 12 and 13 make the same allegations concerning the January 20, 2016 IEP as alleged regarding the previous IEP's. The fact that Student alleges the same procedural and substantive violations occurred with regard to the January 20, 2016 IEP as occurred with regard to previous IEP's does not impose an obligation to provide more detail. As discussed above, Student's allegations are sufficient to provide District with an awareness of the alleged deficiencies in the IEP and the IEP process that form the basis of these claims.

Issue No. 14, 15, 16 and 17. Student's Issues 14, 15, 16 and 17 make the same allegations concerning the January 19, 2017 IEP, as amended, as alleged regarding the previous IEP's. The fact that Student alleges that the same procedural deficiencies occurred, and that this IEP also failed to address the same areas of need identified as being areas of need for several years, does not make the facts any less sufficient for providing District with an understanding of the problems raised as to the January 19, 2017 IEP. These allegations are sufficient to provide District with an awareness of the alleged deficiencies in the IEP and the IEP process that form the basis of these claims.

Issues Nos. 18, 19, 20 and 21. Student's Issues 18, 19, 20 and 21 make the same allegations concerning the December 15, 2017 IEP, as amended, as alleged regarding the

previous IEP's. The fact that Student alleges the same procedural and substantive violations occurred with regard to the December 15, 2017 IEP as occurred with regard to previous IEP's does impose an obligation to provide more detail. The nature, frequency, duration and delivery model of the services that Student contends should have been offered, or the content of the goals that Student contends should have been written to address the delineated alleged areas of need, are a matter for proof at trial, and need not be alleged in minute detail for District to gain an awareness of the nature of the problems alleged. Student's allegations are sufficient to provide District with an awareness of the alleged deficiencies in the IEP and the IEP process that form the basis of these claims.

In summary, 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 21 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: June 27, 2018

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