BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Matter of: | |
| PARENT ON BEHALF OF STUDENT, | OAH Case No. 2017110296 |
| v. | ORDER DETERMINING COMPLAINT, AND EACH CLAIM, SUFFICIENT |
| LOMPOC UNIFIED SCHOOL DISTRICT. | |

On November 6, 2017, Parent on behalf of Student filed a due process hearing request[1] (complaint) with the Office of Administrative Hearings naming Lompoc Unified School District. On November 9, 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).

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 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,

[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).

*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 facts alleged in Student's complaint are sufficient to put District on notice of the issues forming the basis of the complaint. Student, who is 18 years old, alleges that District denied her a free appropriate public education for the 2015-2016, 2016-2017 and 2017-2018 school years because her individualized education programs were inadequate for a number of reasons, including incorrect or missing present levels of performance, inadequate transition and behavior support plans, goals that were unclear or did not address areas of need, lack of mainstreaming opportunities, insufficient services, and improper removal of Student from the classroom resulting in excessive missed instruction, among other alleged procedural and substantive denials of FAPE. Student also alleges in detail, by school year, that she was inappropriately and incompletely assessed in academics and behavior, inappropriately placed in a general education program, that District did not implement the specialized academic instruction services provided in the IEP's, and that Student failed to make progress. The complaint alleges that, in August 2017, District disregarded Parent's conservatorship documents and improperly placed Student on a diploma track. The complaint alleges Student's current address, and that she lived within District boundaries at all relevant times. As remedies, Student seeks independent educational evaluations, compensatory education, reimbursement to Parent for educational expenses incurred, and placement in an appropriate transition program to include job training.

District contends that it needs more information about where Student lived and when, when the conservatorship was established, and where the conservator lived and when to determine if and when it had any responsibility to Student. Student provided her current address in the complaint, which is all that is required by the Education Code (Ed. Code, § 56502 (c)(A)) regarding a statement of residence. The additional information sought by District is for purposes of defense, and is not required to describe the nature of Student's claims against it.

District contends that Student's issues for the 2015-2016 school year are beyond the statute of limitations. A notice of insufficiency challenges only whether the complaint provides the District with an awareness or understanding of the issues, not whether defenses such as the statute of limitations would bar the claims.

District contends that insufficient facts are alleged to support Student's Issues 1(c), 2(d) or 3(c) alleging that Student required a one-on-one aide. Student's alleges behaviors, such as striking others and removal from the classroom for hours at a time due to behaviors, that adequately support these issues.

District contends that insufficient facts are alleged to support Student's Issues 1(d), 2(e) and 3(e) alleging that District failed to provide Student with a safe learning environment, particularly as the 2017-2018 school year had just begun. Student alleges repeatedly leaving class without permission, elopement, and incidents of physical aggression that adequately support these issues.

District contends that the allegations at Issues 1(k) and 2(g), that Student's IEP's were not implemented, are vague and not supported by facts. Student's complaint alleges multiple failures to implement her IEP's to support these claims, including (for 2015-2016) failure to refer Student to the Workability program, providing Student with an untrained aide, removing Student from 154 class periods, placing Student in general education classes rather than in specialized academic instruction, failing to have Student attend Art class, general education classes, (for 2016-2017 school year) placing Student in general education classes instead of specialized academic instruction, removing Student from instructional time for 197 class periods, failing to invite Student or allow her participation in extracurricular activities, and removing her from school entirely for the last week of school and failing to provide instruction during 2017 ESY.

District contends that insufficient facts are alleged to support Student's Issue 3(l) that District attempted to improperly exit Student from special education by issuing her a high school diploma, because it didn't issue her a high school diploma. However, Student alleges that District held an IEP team meeting to switch Student from a certificate of completion track to a diploma track, and transferred her out of core curriculum in specialized academic instruction into general education elective classes, in disregard of Parent's conservatorship of Student. These facts are sufficient to provide District with an awareness of the nature of Student's claim.

Lastly, District contends that Student's Issues 4(a) and 4(c), alleging that District failed to assess Student for transition and assistive technology needs is vague as to time and repetitive of other claims. The time frame of the 2015-2016, 2016-2017 and 2017-2018 school years is clearly alleged, providing District with an awareness of the nature of these claims.

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. Student will be required to establish the residence of Student or her conservator in order to prevail at hearing, as well as the alleged procedural and substantive denials of FAPE, but her current allegations are sufficient to provide District with an awareness and understanding of the issues forming the basis of her complaint.

Therefore, Student's statement of the claims is sufficient.[2]

ORDER

1. Student's complaint, including each of the claims alleged in 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: November 14, 2017

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

[2] Student's November 13, 2017 Motion to Strike District's NOI is dismissed as moot with the denial of District's NOI.