BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT.	OAH Case No. 2016120096 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On November 21, 2016, Parent, on behalf of Student, filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming Los Angeles Unified School District. Student's complaint did not include a proof of service. OAH sent District a copy of the complaint on December 2, 2016. District received a copy of the complaint from Parent on December 6, 2016. On December 14, 2016, 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).

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 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

[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).

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's complaint was filed on November 21, 2016. District indicates in its NOI that it received Student's complaint on December 2, 2016, from OAH and on December 6, 2016, from Student. District's NOI was dated, filed with OAH, and served on December 14, 2016, which is more than 15 days after Student's complaint was filed, however, less than 15 days after it received Student's complaint. Thus, District's NOI was filed within the statutorily required timeline.

Some of the facts alleged in Student's complaint are insufficient to put the District on notice of the issues forming the basis of the complaint. Student's complaint identifies issues and related facts about the problems, however, some are not specific enough to permit District to respond to the complaint and participate in a resolution session and mediation. Although the complaint does not specifically enumerate the issues, Student articulates the below issues within the complaint which are sufficiently pled.[2]

1) Did District deny Student a free and appropriate public education by failing to provide individual speech therapy from February 2015 to the present?

[2] The issues have been reframed for clarity, and to align the issues statements with statutory language. If Parent, on behalf of Student, wishes to clarify the issues that OAH has identified, Student will need to file an amended complaint with the clarifying information.

2) Did District deny Student a FAPE by failing to provide appropriate occupational therapy services, including a sensory diet, from May 2015 to the present?

3) Did District deny Student a FAPE by failing to provide Student with an iPad/laptop as suggested in the May 2015 assistive technology report?

4) Did District deny Student a FAPE by failing to adhere to the timelines for the occupational therapy assessment conducted on December 8, 2015?

5) Did District deny Student a FAPE by failing to provide Parent with a copy of Student's February 2, 2016 IEP?

The rest of the complaint is overly vague as it alleges numerous other facts, but does not state how the facts amount to a denial of FAPE. It is unclear from the complaint what goals were removed from the individualized education program, and when those goals were removed. Student alleges District denied student a FAPE by impeding Parent's ability to participate in the IEP process, but does not state how parent was impeded. Further, Student does not list out what the issues are, but instead provides a narrative of facts with some alleged denials of FAPE interwoven. It is impossible to ascertain what the issues are within the factual narrative.

A parent who is not represented by an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. (Ed. Code, § 56505.) Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

ORDER

1. Issues one, two, three, four, and five listed above are sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).

2. All other facts and issues alleged in Student's complaint are insufficiently pled under title 20 United States Code section 1415(c)(2)(D).

3. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).[3]

4. The amended complaint shall comply with the requirements of title 20 U.S.C. section 1415(b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.

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[3] The filing of an amended complaint will restart the applicable timelines for a due process hearing.

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues one, two, three, four, and five listed above.

DATE: December 19, 2016

DocuSigned by:
Linda Johnson
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LINDA JOHNSON
Administrative Law Judge
Office of Administrative Hearings