BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. TUSTIN UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018060278 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On June 1, 2018, Parent on behalf of Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming Tustin Unified School District as respondent. On June 12, 2018, Tustin filed a Notice of Insufficiency as to Student's complaint. On June 15, 2018, the parties filed a stipulation that would allow Student an extended period of time to file a response to the Notice of Insufficiency. That stipulation indicated that Student anticipated filing the response no later than June 21, 2018.

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 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.)

Minimal pleading standards apply to requests for due process pursuant to the Individuals with Disabilities Education Act. (*Schaffer ex rel. Schaffer v. Weast,* (2005) 546 U.S. 49, 54 [126 S.Ct. 528, 163 L.Ed.2d 387.] 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

Stipulation to Extend Time for Response to Notice of Insufficiency

Tustin's Notice of Insufficiency was filed prior to the 15 day deadline. (20 U.S.C. 1415(c)(2)(A).) Both state and federal special education law require that a determination as to the sufficiency of a complaint must be made within 5 days of the filing of a notice of insufficiency. (20 U.S.C. § 1415(c)(2)(D); Ed. Code § 56502(d)(1).) Generally, OAH allows a party to respond to a motion within three days of filing. However, in the case of a notice of insufficiency, the statute does not provide for the filing of an opposition or require consideration of an opposition. Determination of sufficiency must be based on the face of the notice in conjunction with the request for due process originally filed. (20 U.S.C. § 1415(c)(2)(D); Ed. Code § 56502(d)(1).)

Determination of Sufficiency of the Request for Due Process

The facts alleged in Student's complaint are sufficient to put Tustin on notice of the issues forming the basis of the complaint. While the statement of the problem is general, it is followed by a request for remedies based on legal authority and facts that follow the issue statement. Tustin asserts that Student has not pled how she believes Tustin has denied her a FAPE. However, a review of the facts pled reveals several specific factual allegations that would support allegations of violations of state and federal special education laws, such as allegations of child find violations; challenges to the appropriateness of Tustin's assessments, allegations of failure to assess in all areas of need; and allegations of failure to develop goals

and provide services pertaining to all areas of need, among others. The combination of facts pled and authorities asserted as a basis for the complaint puts Tustin on notice of Student's intent to attempt to pierce the statute of limitations and the facts upon which Student seeks relief. Student's complaint pleads adequate facts about the problem to permit Tustin to respond to the complaint and participate in a resolution session and mediation.

ORDER

1. The complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).

2. The prehearing conference and hearing dates stated in the June 7, 2018 scheduling order in this matter are confirmed.

DATE: June 18, 2018

DocuSigned by:
Penelope S. Pahl
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PENELOPE S. PAHL
Administrative Law Judge
Office of Administrative Hearings