

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

NORWALK-LA MIRADA UNIFIED
SCHOOL DISTRICT, LONG BEACH
UNIFIED SCHOOL DISTRICT, WEST
SAN GABRIEL VALLEY SELPA AND
LOS ANGELES COUNTY DEPARTMENT
OF EDUCATION

OAH CASE NO. 2013120327

ORDER DENYING LONG BEACH
UNIFIED SCHOOL DISTRICT'S
NOTICE OF INSUFFICIENCY

On December 6, 2013, Student filed a Due Process Hearing Request¹ (complaint) naming Norwalk-La Mirada Unified School District (Norwalk-La Mirada), Long Beach Unified School District (Long Beach), West San Gabriel Valley SELPA (SELPA) and Los Angeles County Department of Education (LACOE). On December 19, 2013, Long Beach timely filed a Notice of Insufficiency (NOI) as to Student's complaint.² Long Beach challenges the complaint on the ground that the complaint alleges no facts that support any claim under the Individuals with Disabilities Act (IDEA) against Long Beach. Accordingly, this Order only focuses on the sufficiency of the complaint as it pertains to Long Beach. For the reasons discussed below, the NOI is denied.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.³ The party filing the complaint is not entitled to a hearing

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

² Norwalk-La Mirada filed a Motion to Dismiss on December 16, 2013, which will be addressed in a separate order.

³ 20 U.S.C. § 1415(b) & (c).

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 (FAPE) 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.⁴ 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.⁵

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁶ 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.⁷ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁸

DISCUSSION

Student’s complaint alleges that she is fourteen years old and in the ninth grade; her school of residence is in Norwalk-La Mirada; and she is eligible for special education under the classification of Other Health Impaired. She further alleges that during the summer of 2013, Student demonstrated aggressive behaviors that caused her family to be concerned for their safety; on August 16, 2013 Student was admitted to Harborview Adolescent Residential

⁴ 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

⁵ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁶ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁷ *Alexandra R. v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, No. 06-cv-0215-JL) 2009 WL 2957991 at p.3 [nonpub. opn.]; *Escambia County Board 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, No. 8:04CV2657T24EAJ) 2005 WL 2850076 at p. 3[nonpub. opn.] ; but cf. *M.S.-G. v. Lenape Regional High School Dist.* (3d Cir. 2009) 306 Fed.Appx. 772, at p. 3[nonpub. opn.].

⁸ Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed.Reg. 46540-46541, 46699 (Aug. 14, 2006).

Center in Long beach, a skilled nursing facility, where she attended Regency High School, a non-public school associated with Harborview; Long Beach held an IEP meeting on October 2, 2013 without accommodating Student's parent's (Parent) schedule and as a result Parent did not attend the IEP meeting; Long Beach later provided Parent with a copy of an IEP for signature; and the October 2, 2013 IEP did not offer an appropriate placement for Student based upon her unique needs. Student alleges that she is scheduled to be released from Harborview on December 18, 2013; she is not safe to return to home; and Long Beach failed to offer her a residential placement in her IEP.

The complaint identifies a single issue: Student asserts that all of the named districts, including Long Beach, denied her a FAPE during the 2011-2012, 2012-2013, and 2013-2014 school years, by failing to offer her an appropriate educational program, including an appropriate placement and related services, designed to provide her with an educational benefit. As a proposed resolution, Student seeks, among other things, a residential placement and appropriate related services and supports related to her behavior and emotional needs.

Contrary to Long Beach's assertion that Student pleaded no facts against it, Student has pleaded specific facts as to Long Beach in connection with the aforementioned issue, as described above. Issue 1 is sufficiently pleaded to put Long Beach on notice of the claims against it in order to prepare for and attend a resolution session, mediation and due process hearing. Student's proposed resolutions are also sufficient as to Long Beach. Therefore, the NOI is denied.

ORDER

1. The complaint is deemed sufficient under Title 20 United States Code section 1415(c)(2)(C) and Education Code section 56502, subdivision (d)(1) as to Long Beach Unified School District. This Order does not address the sufficiency of the complaint as to any other named party.

2. All mediation, prehearing conference, and hearing dates in this matter are confirmed as to Long Beach Unified School District.

Dated: December 19, 2013

/s/

ADRIENNE L. KRIKORIAN

Administrative Law Judge

Office of Administrative Hearings