

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.

OAH Case No. 2015110514

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On November 13, 2015, Student filed a Due Process Hearing Request¹ (complaint) naming Norwalk-La Mirada Unified School District, contending that District denied Student a free appropriate public education by committing several procedural and substantive violations of the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000, et seq.; Cal. Code. Regs., tit. 5, § 3000 et seq.).

On November 12, 2015, District timely filed a Notice of Insufficiency (NOI) as to Student's complaint.² For the reasons discussed below, Student's complaint is sufficient.

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 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

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 District filed its Notice of Insufficiency the day before Student filed the complaint.

³ 20 U.S.C. § 1415(b) & (c).

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, *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 46540-46541, 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. The complaint alleges: Student was ten years old and in fifth grade in the District at the time of the complaint, and eligible for special education under the category of autism. Student was enrolled in a special day class with limited mainstreaming in a general education math class and a half-day aide. Student has done well in his mainstream math class, and would be successful in general education classes with appropriate services to address behavioral issues and pragmatic social skills deficits. Parents have unsuccessfully sought such placement and services. At Student’s most recent IEP meeting, his IEP team failed to appropriately consider a parentally-obtained speech and language assessment of Student that recommended additional speech therapy to improve Student’s pragmatic social skills, but instead recommended that Student receive no speech and language therapy. A District behavior intervention services report indicated that Student’s behaviors of hitting, eloping, throwing items and biting had improved so that Student no longer needed a full-day one-on-one behaviorist; however, Student’s behaviors had not improved sufficiently for him to be fully mainstreamed.

As resolution, Student seeks placement in general education classes with a full-time behavioral aide to be provided by a non-public agency, and an appropriate social skills program; or, alternatively, placement in an appropriate nonpublic school. Student also seeks an independent speech and language assessment. A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the

time. (20 U.S.C. §1415(b)(7)(A)(ii)(IV).) The proposed resolutions stated in complaint are not well-defined. However, Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

Student's complaint identifies the issues and adequate related facts about the problem to permit District to respond to the complaint and participate in resolution session and mediation. Student's statement of 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: November 17, 2015

/s/
ROBERT MARTIN
Administrative Law Judge
Office of Administrative Hearings