BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LONG BEACH UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013030018 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On February 27, 2013, Student filed a Due Process Hearing Request[1] (complaint) naming Long Beach Unified School District (District) as the respondent.

On March 8, 2013, District timely filed a Notice of Insufficiency (NOI), and a Motion to Dismiss Student's complaint.[2]

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 (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

[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's Motion to Dismiss will be addressed in a separate Order.

[3] 20 U.S.C. § 1415(b) & (c).

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

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

The facts alleged in Student's complaint are sufficient to put District on notice of the issues forming the basis of the complaint. Student alleges that District failed to assess Student in the areas of behavior and occupational therapy; and at individualized education program (IEP) meetings in January 2013, failed to offer a free appropriate public education (FAPE) by failing to offer appropriate behavioral services, occupational therapy services, appropriate placement and extended school year. Student also contends that District denied Student a FAPE by failing to make a timely offer of placement, and by failing to have in attendance a general education teacher, special education teacher, and administrator. The complaint identifies the issues and adequate related facts about the problem to permit District to respond to the complaint.

District's NOI contends that the complaint contains insufficient factual details to explain "how or why" these alleged failures occurred, or in what particulars District's offer of FAPE was deficient. District also complains that the complaint is

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[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).

imprecise with regard to which of two January IEP meetings are at issue in each of the allegations.

Under the liberal construction and relative informality of due process hearings under IDEA, however, Student's complaint contains sufficient factual allegations to provide an awareness and understanding of the issues forming the basis of the complaint. Therefore, Student's statement of the 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.

Dated: March 11, 2013

/s/

JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings