BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. TEMPLE CITY UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017110421 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On November 7, 2017, Student filed a due process hearing request[1] (complaint) with the Office of Administrative Hearings naming Temple City Unified School District. On November 21, 2017, Temple City 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).

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

[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).

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 first issue in his complaint, Issue A, claims that Temple City failed to assess Student in four separate areas of suspected disability: (1) auditory processing, (2) functional behavior, (3) social skills, and (4) educationally related intensive counseling services. In its notice of insufficiency Temple City claims that it cannot determine from the complaint when the duty to assess Student arose. It questions whether the duty arose at the time it reviewed specific educational assessments or at some other time. In regards to each subissue, Student references specific information in assessment reports that were completed in the spring of 2017. There is a section for each area of suspected disabilities, and each one ends with Student claiming, he "has not received a FAPE, at any time pertinent hereto. . . ." Due to the use of this phrase each subissue is insufficiently pled. It is unclear as to the time period Student claims there was a failure to assess. Thus Issue A is insufficiently pled.

Student's Issue B asserts that his IEP for the 2017-2018 school year is deficient and does not provide him with a FAPE because it does not state "accurate present levels of performance [and] does not provide measurable annual goals. . . ."[2] Subissue B(1) concerns purported inaccurate present levels of performance being reported in the IEP, which then affected the adequacy of the goals. Subissue B(2) claims that the "goals in the June 13, 2017 IEP document lack the requisite clarity and specificity to make them measurable as they do not identify what prompting levels or methods are to be utilized, and do not include a prompt fading plan." Student also claims goals were not written in all areas of need, and cites the need for a counseling services goal. Finally, Student claims that because Temple City's June 13, 2017 IEP, contemplated Student returning to a public high school it required transition goals for this return. Student has provided sufficient information to put Temple City on

[2] The IDEA was reauthorized in 2005, and the term, "present levels of performance" was replaced with the term, "academic achievement and functional performance." (20 U.S.C. § 1414(d)((1)(A)(I).)

notice that goals are deficient because baselines are inaccurate, they are not measurable, and goals need to be added. Issue B is sufficiently pled.

Issue C is a claim that Temple City "has failed to offer Student a FAPE for the 2017-2018 school year." Student describes in detail the educational placement he requires, and explains in detail why and how the offer of placement and services denies him a FAPE. One of these areas is the failure to have a transition plan for the contemplated transfer of Student to a Temple City High School. It is noted that Temple City did not ask that OAH find this issue insufficiently pled. It is found that Issue C is sufficiently pled.

Issue D asserts violations of procedural requirements. Student claims Parents were not provided with translated IEP documents, and Temple City did not make a clear offer of a FAPE for the 2017-2018 school year. Again, Temple City has not asked that OAH find this issue insufficiently pled. It is found that Issue D is sufficiently pled.

Student proposes 13 resolutions for the dispute it currently has with Temple City. Temple City challenges the 10th proposed resolution, reimbursement to Parent for independently obtained services for Student. Temple City is asking that Student specify which services he is asking to be reimbursed. 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).) Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

ORDER

1. Issues B, C, and D of Student's complaint are sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).

2. Issue A of 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.

[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 B, C, and D in Student's complaint.

DATE: November 21, 2017

DocuSigned by:
Rebecca Freie
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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings