BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2013100636
v.	ORDER DENYING DISTRICT'S NOTICE OF INSUFFICIENCY OF STUDENT'S AMENDED COMPLAINT
ENTERPRISE SCHOOL DISTRICT.	

On October 15, 2013, Student filed a due process hearing request[1] (complaint) naming Enterprise School District (District). On November 26, 2013, Student filed an amended complaint. At the December 2, 2013 pre-hearing conference, the Office of Administrative Hearing deemed the amended complaint a motion to amend the complaint (motion), granted the motion, and deemed the amended complaint filed as of December 3, 2013.

On December 11, 2013 (District) timely filed a Notice of Insufficiency (NOI) as to the amended complaint.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.[2] 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.[3] 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] 20 U.S.C. § 1415(b) & (c).

[3] 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.[4]

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint."[5] 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.[6] Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.[7]

DISCUSSION

Student's amended complaint alleges that District denied Student a FAPE by failing to adequately assess in all suspected areas of disability, by failing to offer Student a proper placement, by failing to implement the last agreed upon individualized education program (IEP), by failing to provide prior written notice of IEP team meetings, by failing to ensure attendance of appropriate personnel at IEP team meetings, by failing to timely complete evaluations and conduct timely IEP team meetings, and by holding IEP team meetings without parental participation.

The facts in the amended complaint are sufficient to put the District on notice of the issues stated above, and provided adequate related facts about the problem to permit the District to respond to the amended complaint, and participate in a resolution session and mediation. As a remedy, Student wants to be placed in general education classes with an aide, and appropriate services including occupational therapy, speech and language, social skills, services from a credential teacher, and compensatory one-to-one tutoring. Student

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

[5] Sen. Rep. No. 108-185, *supra*, at p. 34.

[6] *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.].

[7] 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).

also wants in-class strategies to address his attention deficit disorder and anxiety. Student wants an independent academic achievement evaluation with a specific provider and other independent assessments based on his suspected disability. Student further desires payment of his attorneys' fees, his records and an IEP to be convened.

District's statute of limitations argument is not a proper basis for the NOI. Whether Student's allegations are within the statute of limitations period is a fact which will be determined at hearing. The fact that Student alleged some facts which at this stage may appear to be outside the statute of limitations period does not render the amended complaint insufficient. Student properly alleged his issues and requested specific remedies.

ORDER

1. The amended complaint is deemed sufficiently pled under Title 20 United States Code section 1415(c)(2)(C) and Education Code section 56502, subdivision (d)(1).

2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: December 13, 2013

/s/

SABRINA KONG
Administrative Law Judge
Office of Administrative Hearings