BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2013070100
v.	ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT
IRVINE UNIFIED SCHOOL DISTRICT.	

On June 28, 2013, Parent on behalf of Student filed a due process hearing request[1] (complaint) naming Irvine Unified School District (District).

On July 9, 2013, District timely filed a notice of insufficiency (NOI) 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.[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 requirements prevent vague and confusing complaints, and promote fairness by providing the

[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).

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 complaint alleges that he is a verbal ten year old with autism who tests in the low average to average range in academics, albeit with prompting, but has maladaptive behaviors that interfere with his participation in, and understanding of, classroom lessons. Student alleges that he has struggled for the past two years in a District non-categorical mild/moderate special day class (SDC) due to District's failure to provide him with a one-on-one behavior aide and behavior intervention services and supervision. Most recently, in Student's individualized education program (IEP) dated May 23, 2013, District offered to place Student in a moderate/severe SDC with non-verbal students because of his behaviors, rather than provide behavior support in the mild/moderate SDC. Student's complaint does not identify his claims by number, but summarizes Student's contentions as District having denied Student a FAPE for the 2011-2012 and 2012-2013 school years, and having failed to offer a FAPE for the 2013-2014 school year in the May 2013 IEP. As a resolution, Student seeks placement in a mild/moderate SDC with a one-on-one behavioral aide and supervision by a board certified behavior analyst, compensatory behavior intervention services in the home, reimbursement to Student's parents for private placement, and a non-public school (NPS) placement if District cannot provide the requested services within District.

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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).

District brings a "partial" notice of insufficiency, contending that Student's complaint fails to identify the nature of the problem, because it (i) fails to identify each claim by number, (ii) underlines passages in a confusing manner, (iii) fails to delineate each and every related service that Student contends was insufficient to meet his needs, (iv) fails to cite "authority" that District was required to provide support in a less restrictive environment before offering a more restrictive classroom setting, (v) fails to allege facts indicating that he can obtain academic benefit from a mild/moderate SDC setting, (vi) fails to give the dates of all IEPs being challenged, and (vii) references the law requiring a District to appropriately assess a student without making clear if Student is challenging any of District's assessments.

The facts alleged in Student's complaint are sufficient to put the District on notice of the issues forming the basis of the complaint. Although Student inartfully pleads his claims in a narrative form under the heading "Legal Issues," the complaint sufficiently identifies the issues by specifying three school years for which District allegedly denied Student a FAPE (2011-2012, 2012-2013 and 2013-2014), and the "Case Summary" section provides adequate related facts about the problem to permit District to respond to the complaint and participate in a resolution session and mediation. Clearly numbered and delineated claims are always preferable, but the IDEA does not require a due process hearing request to meet the standard of specificity sought by District.

Therefore, Student's statement of his 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: July 09, 2013

/s/
ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings