BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SAN JACINTO UNIFIED SCHOOL DISTRICT AND SOUTH BAY UNION SCHOOL DISTRICT.	OAH Case No. 2015040269 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On April 1, 2015, Parent on behalf of Student filed a Due Process Hearing Request (complaint) naming the San Jacinto Unified School District and the South Bay Union School District.

On April 16, 2015, the attorney for South Bay filed a Notice of Insufficiency (NOI) as to Issue 2 in Student's complaint.[1]

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. (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

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[1] Student's Issue 2 is the only issue that involves South Bay.

[2] 20 U.S.C. § 1415(b) & (c).

to know how to prepare for the hearing and how to participate in resolution sessions and mediation.[3]

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint."[4] The pleading requirements should be *liberally* construed in light of the broad remedial purposes of the Individuals with Disabilities Education Act (IDEA) and the relative informality of the due process hearings it authorizes.[5] Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.[6]

DISCUSSION

In Issue 2, Student alleges that South Bay denied her a free appropriate public education because South Bay failed to properly assess her in the April 5, 2013 psychoeducational assessment it conducted. In support of this issue, Student alleges that South Bay failed to assess her in several critical areas including academic and auditory processing, and that the assessment failed to utilize any behavior rating scales.

Based on the facts presented, Student complaint adequately identifies the problem it seeks to redress, and provides related facts sufficient to allow South Bay to prepare a defense, and participate in a resolution session and mediation. The complaint provides a description of the nature of the problem sufficient to put South Bay on notice. Regarding the proposed resolution, Student requests that South Bay funds an independent psychoeducational assessment of Student. The proposed resolution stated in Student's complaint is well-identified and meets the statutorily required standard of stating a resolution to the extent known and available at this time.

Accordingly, Student's Issue 2 is sufficiently pled against South Bay.

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

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

[5] *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.].

[6] 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).

ORDER

1. Issue 2 of Student's complaint is sufficiently pled against South Bay pursuant 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: April 16, 2015

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings