BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ANTELOPE VALLEY UNION HIGH SCHOOL DISTRICT.	OAH Case No. 2016090726 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On September 15, 2016, Parent on behalf of Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming Antelope Valley Union High School District. District timely filed a Notice of Insufficiency as to Student's complaint. For the reasons discussed below, all five Issues are sufficient.

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).

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to "the public agency involved in any decisions regarding a pupil." (Ed. Code, § 56501, subd. (a).) A "public agency" is defined as "a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs." (Ed. Code, §§ 56500 and 56028.5.)

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

[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).

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.)

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 complaint asserts five legal issues.[2] District claims that all five issues are not sufficiently pled. In doing so, District argues that Student does not specify dates. However, Student's ninth grade school year of 2014-2015 was when Student started at District and the issues are clearly limited to the two years before the complaint's filing. Further, Student lists the dates of individualized education programs, claiming various deficiencies. Therefore, District's general assertion of lack of specific dates is persuasive. District also argues that Student's claims are not made "with specificity." This is not the standard for determining the sufficiency of a due process complaint. Applying the legal standard, Issues One, Two, Three and Four are sufficient; Issues Five is not.

Issue One is that District denied Student a free appropriate education by failing to offer an appropriate placement with sufficient services to provide educational benefit. The complaint specifies that Student is not making adequate progress in the areas of communication, behaviors, and academics, in the present special day class placement. As to services, Student asserts inadequacy in behavior intervention support and the lack of a full-time assistive technology device.

These assertions provide enough information to make District adequately aware of the basis for Issue One. Issue One is sufficient.

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[2] The complaint lists seven "issues." Number six merely cites compensatory education remedy law and number seven lists requested remedies. Issues Six and Seven are not legal issues under IDEA.

In Issue Two, Student was allegedly denied a FAPE because District did not provide home hospital school sufficient for Student to make appropriate progress. The complaint specifies that Student has not been in school since April 2016 for medical reasons and that District has not offered any home hospital educational support. Issue Two provides sufficient information to enable District to prepare for the hearing and to participate in resolution sessions and mediation.

Issue Three states District denied Student a FAPE by failing to provide assistive technology. Student specifies that prior districts' assessments recommended an electronic assistive technology device to help Student communicate and Parent expressed concern to District during IEP's that Student had continuing behaviors because of Student's frustration with his lack of communication. Student further alleges that the IEP team agreed Student was in need of augmentative and alternative communications, but only offered the use of picture icons and symbols and not an electronic device (like an iPad), which Student was successfully using at home. Issue Three provides sufficient information to enable District to prepare for the hearing and to participate in resolution sessions and mediation.

In Issue Four, Student asserts that District failed to provide Student with training in off campus functional abilities. The issue states that District is required to provide transitional services that include community experiences and post-school adult living objectives. Student states that there are no off campus opportunities to learn living skills in his transition plan. Issue Four provides sufficient information to enable District to prepare for the hearing and to participate in resolution session and mediation.

Issue 5 declares District denied Student a FAPE by failing to perform an adequate FBA and prepare an adequate behavior intervention plan and failing to provide behavior intervention services. The complaint identifies the FBA conducted by District on November 10, 2014, and the lack of an offer of a behavior support plan at the November 20, 2014 IEP, Therefore, Issue 5 provides District with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.

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.

DATE: October 6, 2016

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CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings