BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. GOLETA UNION SCHOOL DISTRICT,	OAH CASE NO. 2014100277
GOLETA UNION SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2014080072 [PRIMARY] ORDER DENYING NOTICE OF INSUFFICIENCY

On October 8, 2014 Student filed a Due Process Hearing Request[1] (complaint) naming Goleta Union School District. The matter was consolidated on October 21, 2014 with District's complaint filed on July 28, 2014. On October 21, 2014, District timely filed a Notice of Insufficiency (NOI) as to Student's complaint, in which District challenged the entirety of Student's complaint. For the reasons discussed below, the NOI is denied.

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).

[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).

The complaint is deemed sufficient unless a party notifies the Office of Administrative Hearings and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements.[3]

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.[4] 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.[5]

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint."[6] 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.[7] Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.[8]

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[3] 20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).

[4] 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

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

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

[7] *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.].

[8] 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).

DISCUSSION

Student's complaint alleges that he is 13 years old. The first page of the form complaint alleges that Student is in the seventh grade at Goleta Valley Junion [sic] High School within Goleta Union School District. Inexplicably, the attachment to the complaint inconsistently states at page one, lines 4 and 5 that Student "now attends" Santa Barbara Unified School District. Student alleges he is eligible for special education services under the category of "autism," is non-verbal and uses a communication device at home and school. During his sixth grade year, Goleta Union held a triennial evaluation but failed to appropriately evaluate his cognitive ability by using methods that took into consideration his inability to communicate verbally. Goleta Union found Student eligible under the category of "intellectual disability," and Mother disagreed, requesting an independent educational evaluation. Goleta Union then changed his eligibility, without Mother's consent, to intellectual disability and "autism-like;" Mother requested an independent educational psychoeducational evaluation at Goleta Union's expense; and Goleta Union capped the fee it was willing to pay at an unreasonably low amount for independent evaluations. Student also alleges that, "during the past year," Goleta Union failed to implement his individualized education program, of an unspecified date, by providing services to address speech, safety and money skills. Student's complaint lists proposed resolutions including an independent evaluation by a provider of Parent's choosing and compensatory education.

Based upon a reading of the facts alleged in the entire complaint, the Student alleges the following issues:

1. Did District procedurally violate the Individuals with Disabilities Education Act and as a result deny Student a free appropriate public education by failing to timely provide Student with an independent psychoeducational evaluation following Mother's May 2014 request?

2. Did District deny Student a FAPE by failing to implement his last agreed upon annual individualized education program by providing services in the area of speech, safety and money skills?

3. Did District violated Student's rights under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) (Section 504), the civil rights act under 42 U.S.C. 1983 (Section 1983), and other related state and federal civil rights laws?

District's contention that Student has failed to provide the dates of the IEPs at issue does not render the complaint insufficient. Student has alleged sufficient facts associated with the above issues to give District notice of the claims and to prepare for and participate in a resolution session, mediation and due process hearing. The proposed resolutions are also sufficient.

This Order does not address whether OAH has jurisdiction to hear the claims raised in Issue 3. District may file a motion to dismiss or request that the hearing ALJ consider dismissing Issue three for lack of jurisdiction at the prehearing conference.

ORDER

1. Issues 1, 2 and 3 of Student's complaint, as restated above, are 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 23, 2014

/s/
ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings