BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Matter of:<br><br>PARENT ON BEHALF OF STUDENT,<br><br>v.<br><br>PAJARO VALLEY UNIFIED SCHOOL DISTRICT. | OAH CASE NO. 2013090347<br><br>ORDER DENYING NOTICE OF INSUFFICIENCY |

On September 11, 2013, Parent on behalf of Student filed a due process hearing request (complaint), naming the Pajaro Valley Unified School District (District). On March 13, 2013, Student filed a motion to amend and supplement the complaint, which OAH granted on March 14, 2014 based on District's non-opposition. On March 28, 2014, District timely filed a notice of insufficiency as to Student's amended/supplemental complaint.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.[1] 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.[2] 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.[3]

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[1] 20 U.S.C. § 1415(b) & (c).

[2] 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

[3] 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."[4] 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.[5] Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.[6]

DISCUSSION

Parents acting *pro se* filed the original complaint on Student's behalf, asserting District was aware of Student's diagnosis of severe dyslexia with profound reading deficits, pursuant to reports from August 2011. Despite this knowledge, District "recognized" Student's disability but failed to provide her with a FAPE, in particular because she was not benefiting from her education and therefore her placement was not appropriate. Parents alleged that they enrolled Student in August 2011 in the Linda Mood-Bell program for 78 days, where she made progress. Student then returned to the District where Parents allege that she continued to fail to make progress and showed regression. The original complaint seeks reimbursement for the cost of the Linda Mood-Bell program, an educational program providing FAPE, and funding of independent experts to monitor Student's progress.

Counsel on Parent's behalf filed an amended/supplemental complaint, in which Parents asserted that they were adding a "new issue" to the original complaint. Specifically, the supplemental complaint asserts that Student's January 17, 2013 individualized education program (IEP) consisted of an inappropriate offer for placement in a general education classroom with resource services. Student contends that she requires a placement in a class with a low student-teacher ratio, and therefore Student's parents unilaterally placed her after September 11, 2013 in Chartwell School, a non-public school for learning disabled students. Additionally, the amended/supplemental complaint clarifies the original complaint's issue. Specifically, Parents assert that District denied Student a FAPE from August 2011 through

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[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).

the time of filing of the amended supplemental complaint claiming that Student's January 19, 2012 IEP did not meet Student's needs; that she did not make academic progress; and that District procedurally violated the IDEA when it failed to hold an annual IEP meeting in January 2014, resulting in a denial of FAPE. The amended/supplemental complaint seeks as a proposed resolution reimbursement for educational and assessment costs incurred by Parents, and prospective placement at Chartwell School.

When read together, the two pleadings filed by Student state enough facts such that they can be interpreted to state the issues listed below. Each of those issues is sufficiently pleaded to put District on notice of the issue and to prepare for a resolution session, mediation and due process hearing. Student's proposed resolutions are sufficient.

District's assertion that Student's claims exceed the applicable statute of limitations is an issue that requires findings of fact by the hearing judge and is therefore not appropriate for determination in an NOI.

The issues are:

1. Did District deny Student a FAPE from August 2011 and until September 11, 2013 by failing to offer Student an appropriate placement?
2. Did District deny Student a FAPE from August 2011 and until September 11, 2013 by failing to provide her with appropriate supports and services to address her unique needs in the academic area of reading?
3. Did District procedurally violate the IDEA and therefore deny Student a FAPE by failing to hold an IEP meeting in January 2014?

ORDER

1. The amended/supplemental complaint when read in conjunction with the original complaint is deemed sufficient under Title 20 United States Code section 1415(c)(2)(C) and Education Code section 56502, subdivision (d)(1).

2. The matter shall proceed to hearing only on the issues as defined in this order, unless otherwise ordered.

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

DATE: April 2, 2014

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ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings