BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2018010567
v.	ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT
RIALTO UNIFIED SCHOOL DISTRICT.	

On January 16, 2018, Student filed a due process hearing request[1] (complaint) with the Office of Administrative Hearings naming Rialto Unified School District. On January 29, 2018, OAH found the complaint insufficiently pled, and granted Student leave to file an amended complaint. On January 31, 2018, Student filed an amended complaint. On February 5, 2018, Rialto filed a notice of insufficiency as to Student's amended complaint.

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).

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 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.)

[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).

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 amended complaint contains three issues, each of which Rialto claims is insufficiently pled. However, as discussed below, each issue is found to be sufficiently pled.

Issue 1

In Issue 1, Student claims he was denied a FAPE because Rialto failed to assess him in all areas of suspected disability. Student asserts that Parents requested an assessment of their child on June 30, 2016, to determine if he qualified for special education and related services. At that time Student allegedly demonstrated problems with hearing and speech. Student claims he should have been "comprehensively assessed" in the areas of psychoeducation, speech, health, behavior, occupational therapy, audiology, and deaf and hard of hearing deficits. Student then asserts that when Rialto had made no effort to begin the assessment process, Parents contacted Rialto on August 5, 2016, and also claimed that he was now demonstrating problems with "behavior, low frustration tolerance and was acting out during transitions." Parents also raised concerns about Student's continued "difficulty communicating effectively" and "appeared to suffer from sensory processing difficulties." Student asserts that Rialto then conducted "assessments in the areas of health/development/medical, which largely consisted of a records review, and speech." Student completes this section of the complaint with statements as to how and why he suffered as a result of Rialto's failure to assess in all areas of suspected disability.

Rialto claims this issue is insufficiently pled because it does not provide the name or department Parents directed the June 30, 2016 request for assessment, does not state why the date of "August 15, 2016 [*sic*] "was derived," or why it was significant; and who Parents contacted when they asserted that he had communication and sensory processing issues. Rialto also attacks the sufficiency of the complaint because it "does not describe the alleged behavior problems Student was having, or why the District should have assessed in that area." Rialto also claims Student gives no reason as to why he "required an assessment in

occupational therapy." Rialto also claims Issue 1 was insufficiently pled because Student "does not identify which specific areas of need District did not assess, and lastly does not allege who completed which assessments or when; and does not identify which specific areas of need District did not assess."

The amount of detail Rialto argues should have been pled in the amended complaint as to Issue 1, and the remaining issues as well, to make it sufficient is either excessive, or the information claimed to be missing is actually in the complaint,An example is Rialto's claim that there is no statement of "which specific areas of need District did not assess." However, the second paragraph under the statement of Issue 1 in the amended complaint states each of the areas in which Student contends he should have been assessed: psychoeducation, speech, health, behavior, occupational therapy, etc. After a review of Issue 1 as stated in the amended complaint, the undersigned ALJ finds the issue is sufficiently pled.

Issue 2

In pleading Issue 2, Student contends that he was denied a FAPE because an IEP dated October 16, 2016, did not provide him with "an appropriate education in the least restrictive environment to meet [his] unique needs." Student is described in the amended complaint as hearing impaired. Student claims Rialto did not consider sections of the IDEA or California statutes pertaining to deaf or hard of hearing children. Student contends he should have been placed in general education classes, given goals to address various needs related to his hearing impairment as well as appropriate goals and accommodations and modifications. At the end of the section pertaining to Issue 2, Student alleges that the IEP does not address his problems with listening, speaking and language tied to his hearing loss. Thus, Student claims, he was denied appropriate communication, academic, and self-advocacy skills.

In its notice of insufficiency Rialto argues that the issue is insufficiently pled because it this issue "does not identify Student's placement, or modifications or accommodations the IEP contained or how any of these elements were inappropriate." there is no requirement that Student identify all of the elements of that IEP in his amended complaint. Further, Student has identified at the beginning of the statement of the issue which state and federal statutes were not followed by Rialto which resulted in Student not being provided with education in the least restrictive environment that would meet his needs. Student's Issue 2 is sufficiently pled.

Issue 3

Student's Issue 3 in the amended complaint attacks the September 26, 2017 IEP for the same reasons he attacked the October 16, 2016 IEP. Rialto attacks Issue 3 for the same reasons it attacks Issue 2. Student cites the same statutes as he did in the statement of Issue 2. As was the case with Issue 2, all of the IEP provisions need not be detailed in the statement of the issue. Issue 3 is sufficiently pled such

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.

IT IS SO ORDERED.

DATE: February 8, 2018

DocuSigned by:
Rebecca Freie
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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings