BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENTS ON BEHALF OF STUDENT,	OAH Case No. 2017011078
v.	DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT
RAMONA UNIFIED SCHOOL DISTRICT.	

On May 24, 2017, Student filed an Amended Due Process Hearing Request[1] (amended complaint) with the Office of Administrative Hearings naming the Ramona Unified School District. On June 8, 2017, District timely[2] filed a Notice of Insufficiency as to Student's complaint.[3]

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).

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

[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).

[2] Student filed a response to District's notice of insufficiency on June 13, 2017. There is no provision permitting petitioners to file responses to NOIs. However, to the extent that Student argues that District waived its right to file an NOI as to issues alleged in Student's original complaint, to which District never filed an NOI, Student has failed to cite to any statute or case law that supports his argument.

[3] District's notice of insufficiency also contained a section in which it moved to dismiss certain allegations in Student's amended complaint. District's motion to dismiss will be addressed in a separate order. District is cautioned to avoid conflating notices of insufficiency with motions to dismiss. Notices of insufficiency are based on legal grounds distinct from motions to dismiss. In the future, District should file separate pleadings.

complaint that the party believes the complaint has not met the notice requirements. (20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).)

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.)

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 five allegations, all pertaining to the 2015-2016 and 2016-2017 school years. As discussed below, some the allegations are sufficient and some fail to meet the standard for sufficiency.

In issue A, Student alleges that District denied him a free appropriate public education for both school years at issue by failing to develop his individualized educational programs to provide him with the necessary programming, services, and/or supports to enable him to access his educational curriculum and obtain some educational benefit. District contends that Student's complaint fails to specify what programming, services, or supports Student claims were not provided in his IEPs.

Student's complaint fails to clearly distinguish what programming needs District failed to address in Student's IEPs. Although the complaint states the amount of specialized academic instruction and mainstreaming time the IEPs provided, it fails to state why or how

the placement or programming was not appropriate or what District should have instead offered. Student also states that he had attention and focus issues as well as concerns with social skills, but fails to detail what those concerns were, how his IEPs failed to address those needs, and what District should have offered instead. Student's allegation that District failed to provide necessary programming, an appropriate placement, mainstreaming, issues with focus, attention, or social skills, are all insufficient as plead.

Student contends also that District failed to address his medical and safety needs at school and on the school bus, failed to properly define his eligibility categories, failed to provide him with appropriate related services after his April 2017 early triennial assessment, and failed to provide him with one-on-one-support at school and on the school bus. District is correct that these issues are not concisely defined. The issues are scattered throughout the Statement of Facts portion of the amended complaint. It would certainly be more helpful if Student connected each of his allegations to specific facts. However, the facts as to these issues are stated with sufficient detail to put District on notice of them, and are therefore sufficiently pled. If it was Student's intent to allege other deficiencies in the placement, programming, services, or accommodations contained in his IEPs, Student must clarify them in an amended complaint.

In Issue B, Student alleges that District failed to implement his IEP to provide him with the necessary programming, services, and/or supports to enable him to access his educational curriculum and obtain some educational benefit. However, the only reference in Student's Statement of Facts to District failing to implement anything is at paragraph 58 of the amended complaint. There, Student states that sometime after Student's April 24, 2017 IEP team meeting, District discontinued Student's one-to-one aide support and daily communication logs. However, Student does not state in his amended complaint that either of these items were part of his September 18, 2016 initial IEP, or his August 25, 2016 amended IEP. Rather, Student's Statement of Facts states that District informally provided him with one-on-one aide support and that the school nurse developed the communication log. There is no statement that either of these items was ever formally incorporated in any of Student's IEPs. For these reasons, Issue B is insufficient as pled.

In Issue C, Student alleges that District failed to make a clear offer of FAPE. Neither the issue nor the Statement of Facts states which of his three IEPs developed during the two school years covered by this case is insufficiently clear. Nor does Student state which part of the offers in the three IEPs are unclear. For these reasons, Issue C is insufficient as pled.

In Issue D, Student contends that District denied him a FAPE during the two school years at issue by failing to provide his parents with an opportunity to meaningfully participate in Student's educational process. It is unclear how Student alleges this occurred. Student states in his complaint that Parents and District corresponded about Parents' belief that Student needed one-on-one support and that District informally agreed, at least for a time, to provide the support. Student also states that Parents were confused as to whether the one-on-one support was temporary or permanent. However, Student fails to state whether it is these facts that support his contention that District prevented Parents from participating in

his IEP process, or if there was something specific that occurred, or failed to occur, at his IEP team meetings. District should not have to guess what the basis is for this allegation. For these reasons, Issue D is insufficient as alleged.

In Issue E, Student contends that District failed to timely and appropriately assess him in all areas of suspected disability. Student's Statement of Facts states that District conducted informal rather than formal assessments of him in a variety of areas; that District failed to include input from Parents and Student's neurologist during the April 2017 assessment process; that District mischaracterized Student's vision problems; that District's assessments improperly found that Student's acute health needs did not adversely affect his access to his education and that Student was only eligible for special education based on a vision deficit in one eye; and that District failed to conduct a medical evaluation as part of its assessment. These are all specific contentions and support the allegations in this issue. For these reasons Issue E is sufficient as pled.

PROPOSED RESOLUTIONS

A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (20 U.S.C. §1415(b)(7)(A)(ii)(IV).) District contends that Student's requested remedies do not have a nexus to the allegations in his complaint. As proposed remedies, Student requests independent educational evaluations, compensatory education, and order that District provide one-on-one support at school and on the school bus, reinstatement of related services omitted from District's latest offer of FAPE, and training to District staff on their FAPE obligations. All of these remedies are related to Student's present allegations. All meet the statutory requirement of stating a resolution to the extent known and available to Student at the time he filed his complaint. Student's proposed resolutions are sufficient as stated.

ORDER

1. Issue A of Student's complaint is sufficiently pled as it relates to Student's allegations that District failed to address his medical and safety needs at school and on the school bus, failed to properly define his eligibility categories, failed to provide him with appropriate related services after his April 2017 early triennial assessment, and failed to provide him with one-on-one-support at school and on the school bus. If it was Student's intent to allege that District failed to develop appropriate programming, services, or supports in any other areas, Student's complaint is deficient. Student must file an amended complaint that clearly defines what other programming, services, supports, or accommodations District failed to provide in his IEPs, and which of the three IEPs at issue in this case were deficient.

2. Issue E of Student's amended complaint is sufficiently plead under title 20 U.S.C. section 1415(b)(7)(A)(ii).

3. Issues B, C, and D of Student's complaint are insufficiently pled under title 20 United States Code section 1415(c)(2)(D).

4. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).[4]

5. The amended complaint shall comply with the requirements of title 20 U.S.C. section 1415(b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.

5. If Student fails to file a timely amended complaint, the hearing shall proceed only as to Issue E and those parts of Issue A, as discussed in Paragraph 1 of this Order, found to be sufficient in Student's amended complaint.

DATE: June 13, 2017

DocuSigned by:
Darrell Lepkowsky
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DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings

[4] The filing of an amended complaint will restart the applicable timelines for a due process hearing.