BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2018010567
v.	ORDER FINDING COMPLAINT INSUFFICIENT
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 24, 2018, District timely filed a Notice of Insufficiency as to Student's 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.)

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.)

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[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).

DISCUSSION

Student's first issue alleges that District failed to produce Student's records at any time after a written request dated November 29, 2017; that Student made a second request; that District acknowledged a need to produce records; and that Student was deprived a free appropriate public education as a result. The complaint does not state any facts alleging who requested the records or the date or method of the second request for records. It does not state the identity or title of the District employee who allegedly acknowledged the need to send Student's records. Finally, the complaint does not state facts showing how the alleged failure to provide documents denied Student a FAPE or significantly impeded his Parents' right to meaningfully participate in the development of Student's educational program. Therefore, issue one is insufficiently pled. Student is granted leave to amend issue one.

Issue two alleges District denied Student a FAPE by failing to conduct timely assessments and failing to assess in all areas of suspected disability, after being on notice of Student's need for assessments in June 2016. The complaint references inadequate assessments of hearing loss by an audiologist, no assessment by a deaf hard of hearing specialist, no appropriate psychoeducational evaluation, and no occupational therapy evaluation. The complaint does not make clear whether an audiologist conducted an inadequate hearing assessment or whether a hearing assessment was inadequate because it was not conducted by an audiologist. The complaint does not allege who completed which assessments or when; and does not identify which specific areas of need District did not assess.

Issue two further alleges that Student's individualized education programs did not address all areas of Student need, which resulted in the denial of a FAPE. However, the complaint does not identify which specific areas of need were unaddressed and by which IEP's.

Issue three alleges that Student's IEP team did not consider factors identified in Education Code section 56345 and 20 U.S.C. 1414(d), which require consideration the special communication needs of a student with hearing loss. Read with the caption for the issue, Student refers to his October 7, 2016 and September 26, 2017 IEP's. The state and federal law cited by Student each have numerous sub-parts, which in turn, have their own subparts. The complaint does not attach any particular provision of state or federal law to any particular element of any particular IEP, making it impossible to determine what specific errors connect with any specific denial of FAPE.

Issue three further alleges a denial of FAPE regarding Student's placement, services, goals, modifications, and accommodations. The issue does not identify Student's placement, services, goals, modifications, or accommodations in any of his IEP's or how any of these elements were inappropriate. Nor did he allege the placement, services, goals, modifications, or accommodations that were appropriate for him, at the time the IEP's were developed. Student merely alleges that he was denied a FAPE due to loss of appropriate communication, academic, and self-advocacy skills. The complaint does not identify whether the enumerated

skills were or should have been addressed in any particular IEP through any particular element of the IEP (i.e., placement, services, goals, modifications, or accommodations).

The facts alleged in Student's complaint are insufficient to put District on notice of the issues forming the basis of the complaint in order to respond to the complaint and participate in a resolution session, mediation, and hearing.

ORDER

1. Student's complaint is insufficiently pled under section title 20 United States Code 1415(c)(2)(D).

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

3. 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.

4. If Student fails to file a timely amended complaint, the complaint will be dismissed.

5. All dates previously set in this matter are vacated.

DATE: January 28, 2018

DocuSigned by:

COLE DALTON
Administrative Law Judge
Office of Administrative Hearings

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