BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2016120825
v.	ORDER FINDING STUDENT'S AMENDED COMPLAINT SUFFICIENT AND DENYING MOTION TO DISMISS
MOJAVE UNIFIED SCHOOL DISTRICT.	

On December 20, 2016, Student filed a due process hearing request[1] (complaint) with the Office of Administrative Hearings naming Mojave Unified School District. On January 18, 2017, Student filed an amended complaint. On January 24, 2017, District timely filed a combined notice of insufficiency and motion to dismiss portions of Student's amended complaint.

Twice, by orders dated January 1, 2017 and January 18, 2017, District was admonished that it is improper to file a notice of insufficiency and a motion to dismiss as a single motion, and was directed to file such motions separately in the future. Accordingly, this order will address District's notice of insufficiently only, and District's motion to dismiss is denied as improperly presented in violation of prior orders.

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

[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).

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 alleges that she is in third grade, and is eligible for special education as a student with autism, intellectual disability and speech and language impairment. The complaint alleges that since Student transferred into District in the first grade, District has failed to assess her abilities and functioning, to identify Student's needs, or to provide an appropriate program to meet those needs. District contends that Allegations No. 12, 14, 15, 16, 17, 18 and 19 are insufficiently alleged.

Allegation No. 12. Student alleges at Allegation No. 12 that District failed to meet Student's fine motor needs, specifically, that District: failed to assess and identify those needs; focused on how Student held a pencil, rather than on teaching her to communicate through written words; and failed to draft appropriate fine motor goals or offer appropriate services. Student's claims (throughout the amended complaint) are limited to the time during which Student has been within District. These facts are sufficient to put District on notice of the issues forming the basis of this claim. District contends that Student is attempting to hold District to a higher standard than that required by the IDEA, and while that is a defense that District may raise at hearing, it does not render Student's claim insufficient at giving District notice of the claim asserted.

Allegation No. 14. Student alleges at Allegation No. 14 that District has ignored Student's need for home and community-based services, specifically: that District failed to provide support for Student's family, to provide in-home therapy, or to focus on improving Student's life-long outcomes. These facts are sufficient to put District on notice of the issues forming the basis of this claim. District contends that it is not required to provide the information or services alleged, which defense may be raised at hearing.

Allegation No. 15. Allegation No. 15 states that District failed to meet Student's transportation needs. Student alleges that the transportation provided was unsafe due to insufficient supervision, and that after an incident on the bus Parents had to keep Student home from school for 28 days until District investigated and put safety measures in place, resulting in a loss of education. These facts are sufficient to put District on notice of the issues forming the basis of this claim. District contends that it needs specific dates, but the information alleged is sufficient for District to prepare for and participate in a resolution session and mediation.

Allegation No. 16. Student alleges at Allegation No. 16 that District failed to consider the impact of Student's disabilities on her long-term outcomes, or to share that information with the family. Specifically, Student alleges that District failed to consider designing a program to account for Student's long-term prospects for higher education, work and community involvement. These facts are sufficient to put District on notice of the issues forming the basis of this claim. District contends that it is not required to provide transition services to an 8-year-old, which defense may be raised at hearing.

Allegation No. 17. At Allegation No. 17, Student alleges that from the time Student entered District, District obstructed Parent's participation in designing Student's educational program, specifically by: failing to implement Student's IEP requirement of a one-on-one aide, drafting vague present levels of performance, and failing to discuss methodology with Parents. These facts are sufficient to put District on notice of the issues forming the basis of this claim. District contends that the amended complaint does not specify how these alleged procedural violations resulted in a denial of FAPE; however, significantly impeding the parents' opportunity to participate in the decision making process regarding the provision of FAPE to their child is itself a denial of FAPE. (Ed. Code, § 56505, subd. (f)(2)(B).)

Allegation No. 18. Student alleges at Allegation No. 18 that District failed to provide Student with necessary social work services, which resulted in a lack of parent counseling and a failure to inform Parent of, or coordinate with, non-school services for which Student was eligible. These facts are sufficient to put District on notice of the issues forming the basis of this claim. District contends that it is not required to provide the information or services alleged, which defense may be raised at hearing.

Allegation No. 19. At Allegation No. 19, Student alleges that District violated the prohibition against disability-based discrimination of Section 504 of the Rehabilitation Act of 1973 by showing indifference to Student's need for the services alleged. These facts are sufficient to put District on notice of the issues forming the basis of this claim. District contends that OAH does not have jurisdiction over this claim, but that is properly the subject of a motion to dismiss, not a notice of insufficiency.

In summary, the facts alleged in Allegations Nos. 12, 14, 15, 16, 17, 18 and 19 of Student's amended complaint are sufficient to put District on notice of the issues forming the basis of the amended complaint. Student's amended complaint identifies the issues and

adequate related facts about the problem to permit District to respond to the complaint and participate in a resolution session and mediation.

Resolutions. Student seeks as proposed resolutions: a 40-hour applied behavior analysis program, ongoing speech and language and augmentative and alternative communication services; compensatory education; summer and after-school recreational programs; a comprehensive independent educational evaluation, parent training and damages. 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).) Student has met the statutorily required standard of stating a resolution to the extent known and available to her at the time.

ORDER

1. District's motion to dismiss is denied. This denial is without prejudice to District making such a motion as a separate, stand-alone motion.

2. The amended complaint is deemed sufficient under title 20 United States Code section 1415(c)(2)(C) and Education Code section 56502, subdivision (d)(1).

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

DATE: January 25, 2017

DocuSigned by:
Alexa Hohensee
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ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings