BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: LEGAL GUARDIAN ON BEHALF OF STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT, EASTSIDE UNION SCHOOL DISTRICT.	OAH Case No. 2016030914 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On March 17, 2016, Legal Guardian on behalf of Student filed with a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming Los Angeles Unified School District and Eastside Union School District.[2] On March 23, 2016, Eastside 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

[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's legal counsel only served Eastside with the complaint. All references to "District" herein refer to Eastside.

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 complaint contains four pages and eight exhibits. The exhibits include an Individualized Education Program dated December 17, 2015; a Psycho-educational Evaluation Report dated February 25, 2016; Student's discipline record; a Behavior Support Plan dated February 25, 2016; miscellaneous records, and several notes.

In the complaint, Student contends that he is five years old and attends kindergarten at Tierra Bonita Elementary School. Student was originally referred to "Special Education Services" on September 15, 2011, but his "original special education entry date was January 9, 2014." For the past four years, Student has been receiving services for autism from the Regional Center of North Los Angeles County. Since January 9, 2014, Student has made "little progress" and has had a long history of behavioral issues. In November 2015, Guardian contacted District because of these concerns. On February 23, 2016, Student was suspended for biting a teacher. On that same day, Guardian requested the District to find a more appropriate placement and services for Student due to his ongoing behavior issues. On February 25, 2016, a Behavior Support plan was adopted.

In the complaint, Student alleges a single issue which is stated: "The issue to be addressed is whether the District violated its 'Child Find' obligations through its failure to perform **any** special education assessments on [Student's] behalf during the past two years" (Emphasis in original).

District contends that the complaint fails to include any allegations explaining the issue as it is unclear what actual issue or issues are being raised. District also contends that Student has failed to allege how any of the alleged facts relate to Student being denied a

FAPE. Additionally, District contends that the complaint is not sufficient in that it fails to contain a proposed resolution.

Child find refers to the duty of a local education agency to identify, locate, and evaluate all children with disabilities who are in need of special education. (20 U.S.C. § 1412(a)(3)(A); Ed. Code §§ 56171 and 56301.) Here, Student had been identified, evaluated and found eligible for special education services on January 9, 2014. Thus, it is unclear in what manner District failed in its child find obligations.

It appears what Student is alleging is that District denied Student a FAPE by failing to conduct assessments within the two year period of the filing of the complaint because of Student's lack of progress and continuing behavioral issues. If Student desires to make such an allegation, Student will need to demonstrate facts to support his contention that Student's lack of progress and/or behavior issues warranted District to assess Student.

Student's complaint is insufficiently pled in that it fails to provide District with the required notice of a description of the problem and the facts relating to the problem.

Additionally, 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).) Here, the complaint fails to include a prosed resolution. Thus, the complaint is not sufficient.

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).[3]

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.

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[3] The filing of an amended complaint will restart the applicable timelines for a due process hearing. If Student seeks to have Los Angeles Unified School District as a party, Student needs to serve a copy of the complaint on Los Angeles. Additionally, all allegations and relevant contentions shall be alleged in the amended complaint without the attachment of any IEP or similar document.

5. All dates previously set in this matter are vacated as to both Los Angeles and Eastside.

DATE: March 28, 2016

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ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings