BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2013070920
v.	ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT
DOWNEY UNIFIED SCHOOL DISTRICT.	

On July 18, 2013, Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings (OAH), naming the Downey Unified School District (District). On August 2, 2013, the District filed a Notice of Insufficiency (NOI) as to Student's complaint.[2]

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.[3] 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 complaint that the party believes the complaint has not met the notice requirements.[4] 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) and Education Code section 56502, subdivision (c)(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,

[1] A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 United States Code section 1415(b)(7)(A).

[2] The District concurrently filed a motion to dismiss, which is moot with the granting of the NOI. The District is advised if it files a subsequent motion to dismiss, to file it as a separate document, and not include it with the NOI.

[3] 20 U.S.C. § 1415(b) & (c); Ed. Code 56502, subd. § (d)(1).

[4] 20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).

evaluation, or educational placement of the child, or the provision of a free appropriate public education (FAPE) 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.[5] 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.[6]

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint."[7] The pleading requirements should be liberally construed in light of the broad remedial purposes of the Individuals with Disabilities Education Act and the relative informality of the due process hearings it authorizes.[8] Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.[9]

DISCUSSION

Student's complaint contains three issues for hearing regarding the District's alleged failure to adequately and timely assess her unique needs and failing to provide interpretative services at individualized educational program (IEP) team meetings. As to Issue 1, Student's complaint is confusing because it contends that the District failed to assess her for special education eligibility, but then states that Student has received special education services since 2002. Therefore, Student does not allege sufficient facts in Issue 1 because it is not sufficiently clear to put the District on notice as to whether Student alleges a failure of the District to perform its child find duties or failure to assess Student in all areas of suspected disability, and therefore this claim is insufficient.

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[5] 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

[6] See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

[7] Sen. Rep. No. 108-185, *supra*, at p. 34.

[8] *Alexandra R. v. Brookline School Dist*. (D.N.H., Sept. 10, 2009, No. 06-cv-0215-JL) 2009 WL 2957991 at p.3 [nonpub. opn.]; *Escambia County Board 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, No. 8:04CV2657T24EAJ) 2005 WL 2850076 at p. 3 [nonpub. opn.] ; but cf. *M.S.-G. v. Lenape Regional High School Dist.* (3d Cir. 2009) 306 Fed.Appx. 772, at p. 3 [nonpub. opn.].

[9] Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, 71 Fed.Reg. 46540-46541, 46699 (Aug. 14, 2006).

As to Issue 2, the complaint does not contain sufficient allegations that the District failed to timely assess Student because the complaint does not allege when Parent requested the District to assess Student and for what. The same concern exists in Issue 3 because Student fails to assert whether it was just one, multiple or all IEP team meetings in which the District purportedly failed to provide adequate interpretive services for Parent. Accordingly, Student fails to allege sufficient facts supporting Issues 2 and 3 to put the District on notice, and therefore these claims are insufficient.[10]

Student's proposed resolution is that the District provide specified compensatory education, assess Student, and provide translated IEP's. 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).) The proposed resolutions stated in Student's complaint are well-defined requests that meet the statutorily required standard of stating a resolution to the extent known and available to Student at the time.

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, within 14 days of the date of this order, under title 20 United States Code section 1415(c)(2)(E)(i)(II).[11]

Dated: August 6, 2013

/s/
PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings

[10] Student's counsel is advised to be careful if cutting and pasting this complaint from prior complaints as it appears that the legal issues might be better suited for another complaint based on the factual allegations.

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