BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. MORENO VALLEY UNIFIED SCHOOL DISTRICT.	OAH Case No. 2015090340 ORDER OF DETERMINATION OF SUFFICIENCY OF FIRST AMENDED DUE PROCESS COMPLAINT

On August 31, 2015, Student filed a due process hearing request[1] (complaint) naming Moreno Valley Unified School District. That complaint was deemed insufficient by order dated September 17, 2015.

On September 30, 2015, Student filed a first amended complaint naming District.

On October 14, 2015, District timely filed a notice of insufficiency as to Student's first amended complaint.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.[2] 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 (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.[3] These

[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] 20 U.S.C. § 1415(b) & (c).

[3] 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

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.[4]

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint."[5] 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.[6] Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.[7]

DISCUSSION

Student's original complaint alleged a series of incidents in support of nine civil and constitutional claims, without stating how the incidents related to special education placement or services. Student's first amended complaint now asserts that the alleged incidents were not contemplated in Student's individualized education programs, interfered with his educational development, and denied him a free appropriate public education. As explained below, Student's first amended complaint sufficiently identifies the issues and adequate related facts about each problem. Whether the alleged incidents constitute denials of a FAPE are matters for determination by the hearing judge, after consideration of admissible evidence, and not by way of notice of insufficiency.

Problem 1 alleges that Parent witnessed Student being pushed by an aide for failing to walk quickly enough. Student alleges that pushing him was not a strategy in Student's December 4, 2013 IEP, but the improper venting of frustration by the aide, which caused Student stress and interfered with Student's educational progress. The facts alleged in Problem 1 are sufficient to put District on notice of the issues forming the basis of that claim.

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

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

[6] *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.].

[7] 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).

Problem 2 alleges that Student's teachers during the 2013-2014 school year dressed him and the other students in classroom costumes that frightened him. Student alleges that these actions constituted a denial of FAPE because they interfered with his ability to access his education, and violated the IEP of December 4, 2013 because Parent was not consulted about that classroom activity. The facts alleged in Problem 2 are sufficient to put District on notice of the issues forming the basis of that claim.

Problem 3 alleges that in February 2014, Student was left unsupervised at an assembly on exercise with typical peers who assisted the special education students with physical movements. Student alleges that the untrained peers pulled and pushed him around, causing Student to become so upset that he had to leave school and miss instruction for the rest of the day. The facts alleged in Problem 3 are sufficient to put District on notice of the issues forming the basis of that claim.

Problem 4 alleges that District failed to provide Parent with a written report on how Student received bruises on a day in June 2015, despite Parent's request, and that Student regularly suffered physical harm during supervised times throughout the 2014-2015 school year, which resulted in an environment in which Student could not receive a FAPE. The facts alleged in Problem 4 are sufficient to put District on notice of the issues forming the basis of that claim.

Problem 5 alleges that Parent requested one-to-one teaching for Student during the 2014-2015 school year, which response was never acted upon by District. Problem 5 also alleges that the school psychologist was unfamiliar with Student , and could not contribute to a discussion about Student's needs at a an April 2015 IEP team meeting. The facts alleged in Problem 5 are sufficient to put District on notice of the issues forming the basis of that claim.

Problem 6 alleges that during the 2014-2015 school year, Student's teacher did not have Student participate in class-wide activities because Student had trouble speaking and communicating, depriving Student of a FAPE. The facts alleged in Problem 6 are sufficient to put District on notice of the issues forming the basis of that claim.

Problem 7 alleges that Student had emotional needs that should have been addressed in his IEP's. Also, Student was denied a FAPE because he was frequently left unsupervised, and on one occasion when left unsupervised in the auditorium, Student harmed himself with a fire extinguisher and had to be taken to the hospital. The facts alleged in Problem 7 are sufficient to put District on notice of the issues forming the basis of that claim.

Problem 8 alleges that throughout the 2014-2015 school year, District failed to work on Student's annual goals and IEP's, instead leaving Student in front of a television or computer games for long portions of the day. The facts alleged in Problem 8 are sufficient to put District on notice of the issues forming the basis of that claim.

Problem 9 alleges that Student has been so stressed by the actions of school staff towards him that Student suffers from post-traumatic stress disorder, which District has not

addressed, denying Student a FAPE. The facts alleged in Problem 9 are sufficient to put District on notice of the issues forming the basis of that claim.

Student's first amended complaint identifies the issues and adequate related facts about each problem to permit District to respond to the complaint and participate in a resolution session and mediation.

Therefore, Student's statement of the nine claims is sufficient.

ORDER

1. The complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

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

DATE: October 15, 2015

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings