BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. WINTERS JOINT UNION SCHOOL DISTRICT.	OAH Case No. 2016040409 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On April 4, 2016, Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming Winters Joint Union School District. On April 19, 2016, District 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.)

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,

[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).

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 alleges five claims in the complaint, all of which suffer from deficiencies. The issues are discussed below.

Issue one concerns the levels of Independent Living Services and Community Based Instruction being provided to Student. The complaint states that Student's Independent Living Services is not addressing his needs in recreation and leisure, domestics, community living, and vocational skills. Student also asserts that his class time as spent on homework and not Independent Living Services, he was made to pick up trash, his aide was not appropriately utilized, there was no AT available to him, and that Parent was unnecessarily removed from an Independent Living Services class. In addition, Student alleges that he did not make adequate progress in Independent Living Services, that his Independent Living Services meets could not be met in the classroom, and that he needed Independent Living Services while on home/hospital instruction. Student's proposed resolutions include two hours of daily one-to-one Independent Living Services by a qualified provider at home and in the community, compensation for two years of insufficient Independent Living Services, intensive social skills training, and compensation for two years of insufficient social skills services.

Speech and language services are raised in issue two. Student asserts that he is not receiving the 40 minutes per week of speech and language services required by an IEP, and that services are being provided by telepresence rather than in person. Student also asserts that District has refused to provide services through the Center for Speech, which he states is necessary to meet his needs and for consistency in therapy. Student's proposed resolutions include two hours per week of one-to-one speech and language therapy from the Center for Speech, 40 minutes per week of in-person group speech and language therapy, compensatory speech and language services from the Center for speech, and an IEP team meeting with attendance by a provider from the Center for Speech.

Claim three asserts that goals in an IEP were poorly written and failed to address all areas of need, such as spelling, phonics, and life skills. In addition, Student asserts that he

has repeatedly failed to meet the goals that were set. Student's proposed resolutions include meeting all past goals not met, adding goals for Independent Living Services in areas such as community living, recreation and leisure, domestics, and vocational skills, and making all goals objectively measurable.

At issue in claim four is Student's progress toward graduation. Student asserts that he has received credit for classes he has not taken and is being promoted without doing the work that is required of other students. He also charges that District violated an IEP by not providing Math Apps and Life Skills lessons to his home/hospital instructor. Student's proposed resolutions include deferring Student's graduation until he meets all IEP goals and fulfills all graduation requirements. In addition, Student's progress toward graduation needs to be verified to ensure that he has met all graduation requirements. Student also proposes that his home/hospital instructor be provided with all assignments given to other students in his classes.

Claim five asserts that District has failed to assess and address his needs connected with orthographic dyslexia, which has adversely impacted his reading and spelling. Student's proposed resolution is that he be provided with intensive tutoring from Orton Gillingham to address his needs due to orthographic dyslexia, such as decoding issues.

With regard to claim one, Student fails to set out the time period in which the alleged failures to address his needs for appropriate Independent Living Services took place. Similarly, no information is provided regarding when the other improprieties took place. District is entitled to a sufficient level of factual detail to allow it to participate in resolution sessions and mediation and enable it to prepare for the hearing. Because he has not provided information as to the period when the charged acts took place, Student has failed to state sufficient facts supporting this claim, and the claim is insufficient. Any refiling of this claim should include the period of the claimed violations sufficient to allow District to address the issues.

Claim two suffers from a similar defect. Student has not set out which IEP(s) have been violated by District's failure to provide speech and language services and the time period over which required services were not delivered. Accordingly, Student has failed to state sufficient facts supporting this claim, and the claim is insufficient. If Student chooses to refile this claim, he must include specific allegations regarding the dates and terms of the IEPs which were violated and the time period in which the violations took place.

The same details are missing from claim three. Student has not provided sufficient information to enable District to know which IEP(s) contained insufficient or poorly constructed goals and which goals he asserts were not met. For those reasons, Student has failed to state sufficient facts supporting this claim, and the claim is insufficient. If this claim is refiled, those details must be provided.

Claim four also lacks details relating to the IEP(s) that he alleges were violated and the classes for which he should not have received credit. District has not raised those issues.

Instead, it has asserted that Student's graduation credits and grade promotion is not related to Student's identification, evaluation or educational placement. To the extent that District's argument is properly raised in a Notice of Insufficiency, which is generally directed at the description of the issue and not its nature, and not by a motion to dismiss, it is unpersuasive. Student's allegation concerns his educational placement and the provision of a free appropriate public education, contending that he has been advanced through grade levels and towards graduation without satisfying educational requirements because of his disability so District can end its obligation to provide services for him. Although this claim does describe an appropriate claim, Student failed to state sufficient facts supporting this claim, and the claim is insufficient. Any refiling of this claim should include the dates and terms of the IEP(s) that were violated by District's acts and, to the extent practicable, specific allegations in the description of Student's problem/complaint supporting his claim that he has been wrongly credited for completion of classes that he did not take.

With regard to claim five, Student fails to allege sufficient facts regarding his orthographic dyslexia to enable District to respond to the allegation. Student needs to provide a time frame in which the disability was manifest, the nature and duration of District's refusal to assess, and some description of the signs of the disability or the communication of other information giving rise to District's duty to assess and respond. Therefore, Student has failed to state sufficient facts supporting this claim, and the claim is insufficient. Any restatement of this claim must address those defects.

Student's proposed resolutions have not been challenged by District. 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).) Although some areas of requested relief are somewhat vague or contingent, Student has met the statutorily required standard of stating a resolution to the extent known and available to him 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 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.

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

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: April 20, 2016

/s/

CHRIS BUTCHKO
Administrative Law Judge
Office of Administrative Hearings