BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. TORRANCE UNIFIED SCHOOL DISTRICT AND LOS ANGELES COUNTY OFFICE OF EDUCATION.	OAH Case No. 2015120709 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On December 17, 2015, Parents on behalf of Student filed a due process hearing request[1] (complaint) with the Office of Administrative Hearings naming respondents Torrance Unified School District (District) and Los Angeles County Office of Education. On December 30, 2015, 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.)

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[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).

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 alleges that: due to birth complications Student demonstrates severe cognitive and communication delays, has difficulty with eating and maintaining stamina, and has required multiple corrective vision surgeries; at Student's April 2014 individualized education program, Respondents eliminated Student's feeding goal, feeding therapy and one-on-one assistance with eating, as a result of which Student was unable to feed himself, lost weight, was unable to focus or attend and failed to make progress on his remaining goals; Respondents reduced Student's amount of occupational therapy without notifying Parents; Respondents refused to reinstate Student's feeding therapy at the April 2015 IEP, contending it was medical in nature and not Respondent's responsibility, but failed to refer Student to California Children's Services to provide that service during the school day; Respondents failed to have an occupational therapist at the April 2015 IEP team meeting; Respondents failed to evaluate Student for augmentative and alternative communication or to conduct vision screening. The complaint alleges that the inadequate IEP offers, failure to implement, and failures to evaluate, Respondents denied Student a free appropriate public education under the IDEA (five claims) and Section 504 of the Rehabilitation Act (one claim) for the past two years.[2]

As proposed resolutions, Student seeks independent vision and augmentative and alternative communication evaluations, compensatory education and services, that feeding and occupational therapy services be restored, and that a health plan be designed to address his many health needs in the educational environment.

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[2] District's notice of insufficiency also contends that the Section 504 claim is outside OAH jurisdiction, however this contention is tantamount to a motion to dismiss and cannot be addressed via the notice of insufficiency, as the claim is adequately pled. This ruling is without prejudice such that District may file a motion to dismiss the Section 504 claim.

The facts alleged in Student's complaint are sufficient to put Respondents on notice of the issues forming the basis of the complaint. Student's complaint identifies the issues and adequate related facts about the problem to permit Respondents to respond to the complaint and participate in a resolution session and mediation.

Therefore, Student's statement of six 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: December 30, 2015

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings