BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2014020700
v.	ORDER OF DETERMINATION OF PARTIAL SUFFICIENCY OF DUE PROCESS COMPLAINT
LODI UNIFIED SCHOOL DISTRICT.	

On February 19, 2014, Parent on behalf of Student (Student) filed a Due Process Hearing Request[1] (complaint) naming Lodi Unified School District (District). On February 28, 2014, District timely filed a Notice of Insufficiency (NOI) 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.[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 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]

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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 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).

[4] 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."[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

The complaint lists five (5) problems or issues, some of which are sufficient and some which are insufficient. The issues are discussed below.

Issue One states that, because of Student's increased bad behaviors, Parent requested the viewing of school bus videotapes by the IEP team to gain understanding regarding behavioral triggers. Parent seeks an appropriate plan to address Student's behaviors. Parent asserts her request was denied but, thereafter, the bus videotape was viewed by District members of the IEP team and used to expel Student from school. District has denied Parent the opportunity to view the videotape.

Issue One is unclear in that it provides no timeline for the factual assertions. Also, Issue One implies, but does not unambiguously assert, that there was a manifestation review and determination, which resulted in Student's expulsion. Issue One may merely be asserting that Parent is being denied an opportunity to fully participate in the IEP process because she is being deprived of an opportunity to review the videotape of her son's bus behavior. Issue One is insufficiently pled because it is vague, confusing, and fails to provide adequate information that would enable District to knowingly prepare for the hearing and how to participate in the resolution session and mediation

Issue Two asserts that there is a May 9, 2013 agreement with District to provide training to members of the support staff, but that the training has been inadequate. Since reference is made to an agreement, Issue Two may be claiming that District has failed to implement the terms of a settlement; however, this is not unambiguously stated. Further, in claiming the training to be inadequate, Issue Two does not specify the type of training,

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[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).

identify the staff, nor state in what manner the training was inadequate. Issue Two is insufficiently pled because it is vague, confusing, and fails to provide adequate information that would enable District to knowingly prepare for the hearing and how to participate in the resolution session and mediation.

Issue Three asserts there was a May 9, 2013 agreement that the April 5, 2013 IEP would have a provision stating that if Student was suspended from the bus, another bus would be sent as soon as one became available. The issue's resolution is to put the words back into the IEP, implying that the provision was removed. Issue Three may be asserting that there was an agreement to amend the then current IEP, but it was not done; however, this is not unambiguously stated. Without more specific and clear allegations, Issue Three is unclear, vague, and confusing, thus providing insufficient information.

Issue Four asserts that even though Student has been behind in achieving his IEP goals, District has repeatedly denied Parents' requests for more educational support, like tutoring. Student seeks additional education services. This issue puts District on notice of the facts forming the basis of the problem with sufficient information for District to know how to prepare for the hearing and how to participate in resolution sessions and mediation. Issue Four is sufficient.

Issue Five states the Parent has asked, but District has not provided, mileage reimbursement forms, related to Parent picking Student up from school. This issue is insufficient because it is unclear how these allegations relate to the proposed initiation or change concerning the identification, evaluation, or educational placement of Student or the provision of a free appropriate public education (FAPE) to Student. For example, the issue does not state that Parents are entitled to reimbursement as a related service provided Student by his IEP. Issue Five is insufficiently pled because it is vague, confusing, and fails to provide adequate information that would enable District to knowingly prepare for the hearing and how to participate in the resolution session and mediation.

MEDIATOR ASSISTANCE FOR AN UNREPRESENTED PARTY

A parent who is not represented by an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint.[8] Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

ORDER

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

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8 Ed. Code, § 56505.

2. The complaint's Issues One, Two, Three, and Five are insufficiently pled under section Title 20 United States Code 1415(c)(2)(D).

3. Student shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).[9]

4. The amended complaint shall comply with the requirements of Title 20 United States Code section 1415(b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.

5. If Student fails to file a timely amended complaint, Issues One, Two, Three, and Five of the complaint will be dismissed and the matter shall proceed to hearing as to Issue Four, only.

DATE: March 04, 2014

/s/
CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings

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