BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. TEHACHAPI UNIFIED SCHOOL DISTRICT.	OAH Case No. 2016111006 ORDER OF DETERMINATION FINDING COMPLAINT SUFFICIENT

On November 18, 2016, Student filed a due process hearing request[1] (complaint) with the Office of Administrative Hearings naming Tehachapi Unified School District. Tehachapi timely filed a notice of insufficiency on December 5, 2016.

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, *supra*, at p. 34.) The pleading requirements should be liberally construed in light of the

[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).

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 District delayed scheduling an individualized education program team meeting ordered by a prior OAH decision to discuss the results of an analysis of Student's behavior. It further alleges that District scheduled the meeting for a time Parent was not available, and held the meeting without Parent in attendance. The sole issue is whether District violated the IDEA by failing to schedule the IEP team meeting at a mutually agreed time and failing to ensure that Parent was at the IEP team meeting.

Student's issue is not limited to whether or not District complied with the prior decision in the timing of the IEP team meeting. Failure to comply with an order emanating from a prior due process decision is not within OAH jurisdiction. (*Wyner v. Manhattan Beach Unified School District* (9th Cir. 2000) 223 F.3d 1026, 1029.) Rather, it alleges procedural errors in the implementation of the IEP process.

The IEP process is the means by which school districts and parents collaborate to make changes to the child's educational program concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education. Student alleges that his behaviors interfered with his education, alleging implicitly – if not expressly – that changes in his program were needed and discussed at the IEP meeting held without Parent's participation. The complaint's description of District's alleged procedural errors regarding that IEP team meeting, including delay in scheduling and failure to ensure parental participation, is sufficient to provide District with notice and adequate related facts about the problem to permit District to respond to the complaint and participate in a resolution session and mediation.

Student's proposed resolution request includes behavioral intervention services. 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 resolution stated in Student's complaint has met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

Therefore, Student's complaint 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 9, 2016

DocuSigned by:
Alexa Hohensee
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ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings