BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2013030305
v.	ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT
SANTA BARBARA SCHOOL DISTRICT.	

On March 07, 2013 Student filed a [Due Process Hearing Request][1] (complaint) naming Santa Barbara School District (District). On March 22, 2013, District 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).

The complaint is deemed sufficient unless a party notifies the Office of Administrative Hearings and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements.[3]

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.[4] 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(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).

[4] 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.[5]

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint."[6] 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.[7] Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.[8]

DISCUSSION

Student's complaint alleges four claims in the complaint, some of which are sufficient and some which are insufficient. The issues are discussed below.

. Issue one alleges District refuses to pay for privately obtained services which in the proposed resolution appears to be tutoring services procured by parents. Issue two alleges parent paid for counseling services to address Student's anxiety, depression, and other health problems. The proposed resolution for this issue requests reimbursement for the privately obtained services. Issue four alleges the need for continued therapy services and requests District provide cognitive behavioral therapy. These issues are sufficiently pled because they afford District with enough information to provide an awareness and understanding of the issues forming the basis of the complaint and the relief sought by Student.

Regarding Student's proposed resolutions in Issues one, two and four, 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 resolutions stated in

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

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

[7] *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.].

[8] 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).

the foregoing issues have met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

Issue three of the complaint alleges Student obtained an attorney and a dispute has arisen concerning District's agreement to pay a portion of those fees. This issue is insufficiently pled as it fails to meet the legal requirements under IDEA set forth above. In particular, nothing about this issue can be read as alleging a denial of a FAPE.

A parent who is not represented by an attorney may request that the Office of Administrative Hearings (OAH) provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint.[9] Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

ORDER

1. Issues One, Two and Four of Student's complaint are sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

2. Issue three of Student's complaint is insufficiently pled under Title 20 United States Code section 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).[10]

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, the hearing shall proceed only on Issues One, Two, and Three in Student's complaint.

Dated: March 22, 2013

/s/

STELLA OWENS-MURRELL
Administrative Law Judge
Office of Administrative Hearings

9 Ed. Code, § 56505.

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