BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. MENIFEE UNION ELEMENTARY SCHOOL DISTRICT.	OAH CASE NO. 2014020344 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On February 10, 2014, Parent on behalf of Student filed a due process hearing request[1] (complaint) naming the Menifee Union Elementary School District (District).

On February 13, 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

[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).

named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.[4]

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 facts alleged in Student's complaint are sufficient to put the District on notice of the issues forming the basis of the complaint.

Student's complaint alleges six claims regarding Student's "current" school: (1) that the accommodations and behavior support plan in Student's individualized education program (IEP) are not being implemented, and Parent is being asked by the school to take Student home after a behavior incident occurs, even though Student is calm when Mother arrives at the school, (2) that Student requires further assessment to determine her needs, (3) that Student needs additional assistance in transitioning between learning environments, (4) that Student is not receiving the academic instruction she needs, (5) that Student requires a learning environment with more structure, and (6) that Student has been moved through three classes "this year" and as a result has fallen behind academically.

District challenges each of the claims as not sufficiently detailed with regard to what Student alleges that District did or didn't do, and does not allege the time period at issue.

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

[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).

The law does not require Student to itemize each service that she requires in order to receive a FAPE, only to provide an awareness and understanding of the issues forming the basis of the complaint. Here, it is enough that Student alleges that she is falling behind academically due to District's failure to implement her IEP, to identify and address her needs by conducting necessary assessments, and to appropriately address her academic and behavior needs. Her repeated references to the "current" and "this" school year sufficiently identify the period of time at issue. Student's complaint identifies the issues and adequate related facts about the problem to permit District to respond to the complaint and participate in a resolution session and mediation.

Therefore, Student's statement of her 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: February 14, 2014

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings