BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: EDUCATIONAL RIGHTS HOLDER ON BEHALF OF STUDENT, v. EAST SIDE UNION HIGH SCHOOL DISTRICT.	OAH CASE NO. 2013090024 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On August 28, 2013, Educational Rights Holder on behalf of Student (Student) filed a Due Process Hearing Request[1] (complaint) naming the Eastside Union High School District (District) as respondent.

On September 12, 2013, the 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).

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

[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).

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]

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

Student's complaint alleges three issues. Issue One contends that the District failed in its child find obligations in school years 2011-2012 through 2013-2014. In Issue Two, Student contends that the District has failed from June 2011 through June 2013 to assess Student in all areas of suspected disability by its failure to assess in the areas of Function Analysis Assessment (FAA); neuropsychological; conduct an adequate Functional Behavioral Assessment (FBS); and Social Behavioral Assessment (SBA). In Issue Three, Student contends that he was deprived of a free appropriate public education (FAPE) from June 2011 through the present because the District failed to (1) give Student prior written notice of its refusal to conduct assessments which had been referred by Student; (2) design an appropriate Behavior Intervention Plan (BIP) and/or Behavioral Support Plan (BSP); and (3) offer Student school-based counseling, a mental health assessment,[8] a one-to-one aide, and placement in a nonpublic school.

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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).

[8] The complaint refers to the mental health assessment as an "AB 3632 assessment."

Student alleges approximately two and a half pages of general facts. Student also alleges specific facts in support of each of the three issues. Thus, 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 identifies the issues and adequate related facts about the problem to permit the District to respond to the complaint and participate in a resolution session and mediation.

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.

Dated: September 13, 2013

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings