BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2013070150
v.	ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT
SAN JOSE UNIFIED SCHOOL DISTRICT.	

On June 28, 2013 Parent on behalf of Student (Student) filed with the Office of Administrative Hearings (OAH) a Due Process Hearing Request[1] (complaint) naming the San Jose Unified School District (District) as respondent.

On July 8, 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 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

Student's complaint is 24 pages long. Much of the document, 16 pages, consists of a detailed and rambling narrative of events that have occurred regarding Student, his parents and the District since September 2005. Student lists 18 issues for hearing on pages 19 through 22 of the complaint. None of these issues contain any facts in support of Student's allegations.

The District argues that the complaint, as to all issues except for issues three, four, 12, 16, 17 and 18, is confusing and unclear as to what is being alleged so as to be unable to prepare a response to the complaint and prepare for a resolution session and mediation.

The District's objections are well taken. Issues one, two, five through 11, and 13 through 15, are insufficiently pled because Student merely lists in bullet point form alleged violations by the District. These issues do not contain an adequate explanation of how the District violated Student's procedural or substantive rights, how the IEP fails to meet Student's unique needs, and specifics as to time, and specific IEP's. While the complaint

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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).

contains a lengthy factual narrative, the format of the complaint requires the District to guess which facts relate to a particular issue.

In issue one, Student alleges that the District denied Student a free appropriate public education (FAPE) by a "(r)eduction of related services." Student fails to specify the time frame or what specific Individualized Education Programs (IEP) are at issue. Additionally, Student should specify all such services that Student contends were reduced.

In issue two, Student contends that the Student was deprived of a FAPE when the District failed to "implement RSP services in a pull-out manner." Again, Student fails to specify the time period and IEP's at issue.

In issue five, Student asserts that the District has denied Student a FAPE by failing to implement the accommodation to permit Student to enter his Social Thinking Class late to accommodate Student's anxiety. Student fails to specify the time period and which IEP's are involved.

In issue six, Student contends that the District "failed to report several behavioral incident to Parents (sic) and the failure to engage in the interactive process" which prevented Parent from adequately participating in the IEP process. Student has failed to allege adequate facts to support this issue by failing to specify what behavioral incidents are being referenced, defining what is meant by the "interactive process," and how Parent was denied adequate participation in the IEP process.

In issue seven, Student alleges that he was denied a FAPE when the District failed to accommodate Student's needs developing a Behavior Intervention Plan (BIP) and a Behavior Intervention Plan (BIP). Student needs to state when a BIP should have been developed.

In issue eight, Student alleges that the District discriminated against Student by failing to timely conduct a functional analysis assessment (FAA) or a FBA. Student fails to allege facts to support such a need and when such an assessment should have been conducted.

In issue nine, Student contends that Student was discriminated against by the District, in violation of Section 504 of the Rehabilitation Act (Section 504) and the Americans with Disabilities Act (ADA) by suspending Student for behaviors which nondisabled students have not been suspended. Student has failed to allege any facts to support this allegation.

In issue 10, Student alleges that Student was denied a FAPE when Parents were compelled to pick Student up form school causing Parent to losing time for work and enjoying free time. In conjunction with this issue, Student seeks Parent to be compensated for any wages which were lost because Parent was required to miss work. Since OAH does not have jurisdiction to hear a claim for money damages by a Parent for lost wages as such claim does not fall under the IDEA, issue 10 is not sufficient.

In issue 11, Student alleges he was denied a FAPE because the District did not timely hold a manifestation hearing and then failed to improperly consider whether the IEP's were appropriately implemented or were adequate to meet Student's needs. In reviewing the factual allegations, Student was disciplined on numerous occasions. This issue is uncertain as to which manifestation hearings and IEP's are at issue and in what manner the District violated the IDEA.

In issue 13, Student contends that the District offered placement in a full-time autistic special day class (SDC) was not appropriate. Student fails to allege which IEP's are at issue and how the District's offer of a SDC was not appropriate.

In issue 14, Student alleges that the District failed to implement the BSP to the extent it was in place. Student failed to demonstrate in what manner the District failed to implement the BSP.

In issue 15, Student alleges that the District utilized inappropriate physical restraints and "aversive interventions "and failed to prepare behavior emergency reports nor convene IEP meetings. Student fails to allege specific facts to support these allegations.

ORDER

1. Issues one, two, five, six, seven, eight, nine, 10, 11, 13, 14, and 15 of Student's complaint are insufficiently pled under Title 20 United States Code section 1415(b)(7)(A)(ii).

2. Issues three, four, 16, 17, and 18 of Student's complaint are sufficiently 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).[8]

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 three, four, 16, 17 and 18 in Student's complaint.

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

Dated: July 09, 2013

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings