BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENTS ON BEHALF OF STUDENT,	OAH Case No. 2015080682
v.	ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT
ABC UNIFIED SCHOOL DISTRICT.	

On August 12, 2015, Parents on behalf of Student filed with the Office of Administrative Hearings a Due Process Hearing Request[1] (complaint) naming ABC Unified School District.

On August 25, 2015, ABC filed a response to Student's complaint. On August 27, 2015, ABC filed with OAH a Notice of Insufficiency as to seven of the 16 issues alleged in the 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 comprises 39 pages which include a description of Student's disability and over 13 pages of detailed facts. Student alleges 16 issues which are numbered 5.1.1 through 5.1.16. For identification purposes herein, the issues will be referred to by the last number (one through 16). The complaint is long and rambling to the degree that it is difficult to determine which facts are being alleged to each specific issue.

Student's complaint alleges 16 issues, some of which are sufficient and some which are insufficient. ABC did not contend that issues 1, 5, 6, 7, 8, 9, 10, 13, and 16 were not sufficient. ABC contends that issues 2, 3, 4, 11, 12, 14, and 15 are insufficient as they fail to be supported by sufficient factual support to enable District to respond or prepare an adequate defense. The contested issues are discussed below.

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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).

Issue 2 alleges that ABC failed to implement Student's Individualized Education Program by failing to provide push-in speech and language services. Student fails to identify which IEP is being referred to and what each IEP required in the way of speech and language services. It is unclear whether Student is alleging that certain IEP's required the delivery of speech and language services by a push-in model.

Issue 3 contends that ABC failed to provide Student a free appropriate public education by its failure to provide one-to-one occupational therapy services. In the factual portion of the issue, Student alleges that the assessment was not appropriate. It is unclear what Student is actually alleging. Student fails to offer any facts to demonstrate why he requires one-to-one occupational therapy services.

Issue 4 alleges that the one-to-one aides provided to Student were not properly trained as they lacked two to three years' experience in working with children with autism. Student fails to allege any facts to support why Student requires aides with such experience.

Issue 11 alleges that Student has been denied a FAPE because ABC failed to offer Student's parents the opportunity to attend two conferences per year on autism and eating disorders and related disorders. Student failed to demonstrate the need for such parental training exists.

Issue 12 alleges that ABC has failed to provide Student with a lap top computer, memory book, and software in the areas of reading, writing, and math. Student has alleged no facts to support the need for these items.

Issue 14 alleges that Student's IEP's contain an inadequate level of Applied Behavioral Analysis services. Student specifically states the level of services which he believes would be appropriate. In the lengthy factual rendition, Student lists the ABA services provided and that they were insufficient. Student has alleged sufficient facts for ABC to be on notice as Student's claim.

Issue 15 alleges that ABC failed to identify and develop appropriate goals in all areas of need. Student fails to state in what areas and which goals are not appropriate save for the area of vocabulary. Thus, this issue should be limited to one area-vocabulary- which was the only area identified.

Of the contested issues, issue 14 is sufficiently pled to put ABC on notice as to the basis of Student's claims. Issues 2, 3, 11, and 12 are not sufficiently pled to put ABC on notice as to the basis of Student's claims.

Issue 15 is only sufficient as to allegations that goals in the area of vocabulary were not appropriate for Student.

ORDER

1. Issues 5.1.1, 5.1.5, 5.1.6, 5.1.7, 5.1.8, 5.1.8, 5.1.9, 5.1.10, 5.1.14, and 5.1.16 of Student's complaint are sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).

2. Issues 5.1.2, 5.1.3, 5.1.4, 5.1.11, and 5.1.12 of Student's complaint are insufficiently pled under title 20 United States Code section 1415(c)(2)(D).

3. Issue 5.1.15 is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii) only as to the allegations concerning Student's vocabulary goals, and is insufficient under title 20 United States Code section 1415(c)(2)(D), as to any other goals in Student's IEP's.

4. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).[8]

5. 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.

6. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues 5.1.1, 5.1.5, 5.1.6, 5.1.7, 5.1.8, 5.1.8, 5.1.9, 5.1.10, 5.1.14, part of 5.1.15, and 5.1.16 in Student's complaint.

DATE: August 28, 2015

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings

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