BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SAN DIEGUITO UNION HIGH SCHOOL DISTRICT.	OAH CASE NO. 2013090062 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On August 27, 2013 Student filed a Due Process Hearing Request (complaint) naming the District as the respondent. On September 6, 2013, the San Dieguito Union High School District (District) filed a Notice of Insufficiency (NOI) as to the complaint. On September 11, 2013, the Office of Administrative Hearings (OAH) sustained the District's NOI as to Student's entire complaint, gave Student 14 days to file an amended complained, and instructed Student how to obtain assistance from an OAH mediator in drafting an amended complaint. On September 30, 2013, Student filed an Amended Complaint; District filed an NOI on October 1, 2013, which OAH granted in part and denied in part with leave to amend on October 3, 2013, and instructed Student how to obtain assistance from an OAH mediator in drafting an amended complaint. Specifically, OAH ordered that Issues 3, the first two parts of issue 4, issue 6, and the first two allegations of issue 10 of Student's first amended complaint were sufficient.

Pursuant to an order granting Student an extension of time to file a second amended complaint, Student timely filed a second amended complaint on November 7, 2013. District timely filed an NOI on November 12, 2013.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.[1] 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

[1] 20 U.S.C. § 1415(b) & (c).

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.[2] These 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.[3]

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint."[4] 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.[5] Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.[6]

DISCUSSION

Student's second amended complaint reorganizes and renumbers the issues that were pleaded in his prior complaints. Therefore, all issues in the second amended complaint will be analyzed for sufficiency. After reviewing the entire complaint, the issues identified below are the only issues that District was provided sufficient notice of, and the only issues on which this matter will proceed to hearing. The issues have been renumbered for clarity and consistency.

The first eight pages of Student's complaint consist of a historical factual description of Student's educational history since 2011, including facts pertaining to settlement agreements and modifications between District and Student. The facts refer to exhibits that were separately filed. The history portion of Student's amended complaint is disjointed,

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[2] 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

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

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

[5] *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.].

[6] 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).

repetitive, disorganized, and almost amounts to a stream of consciousness narrative of Student's factual bases for the amended complaint. Student discusses a prior settlement between the parties, which was apparently amended approximately six months ago, and appears to allege that the District failed to comply with some of the terms of the original settlement agreement and the later amendment. Student then alleges denials of a free appropriate public education (FAPE) for the 2013-2014 school year, including allegations that the District failed to follow proper procedures when it last assessed Student. The second amended complaint includes proposed resolutions.

Issue 1 alleges that the District denied him a FAPE by preventing Parent from participating in IEP meetings held on July 19 and July 25, 2013. Student claims that the District would not permit Student's parent to participate in IEP discussions, that the District representatives interrupted her, yelled at her, and mistreated her. This issue states enough facts to put the District on notice of the specific allegations and the facts supporting them to prepare for and participate in a resolution session, mediation and hearing. Issue 1 is therefore sufficiently pled.

Issue 2 alleges that District denied him a FAPE by failing to appropriately assess Student in the area of speech and language. Specifically, Student contends that the District scheduled assessments for Student in April 2013 but did not inform Parent of or consult with her regarding of the dates and times of the assessments. Student further alleges that the District assessors did not communicate with Parent, including interviewing her during the assessment process even though the assessment plans clearly stated that the assessments would include such communications. Student also alleges that District used invalid data from a 2011 speech and language assessment report. As a result Student contends that the District's speech and language assessment was inappropriate, and that district inappropriately decreased Student's services in the area of speech and language. This issue states enough facts to put the District on notice of the specific allegations and the facts supporting them to prepare for and participate in a resolution session, mediation and hearing. Issue 2 is therefore sufficiently pled.

Issue 3 alleges that District denied Student a FAPE by failing to appropriately perform assistive technology and psychoeducational assessments in the spring of 2013. Student alleges that District did not contact Parent when scheduling the assessments, its assessors failed to appear for assessment appointments, and assessors did not contact parent for interviews during the assessments, as specified in an Assessment Plan. As a result of assessment scheduling issues, Student alleges he missed private school credit classes and was denied educational benefits. This issue states enough facts to put the District on notice of the specific allegations and the facts supporting them to prepare for and participate in a resolution session, mediation and hearing. Issue 3 is therefore sufficiently pled.

Issue 4 alleges that District failed to timely provide Parent with Student's records in a timely manner, including the assessment protocols used to evaluate Student from April to July 2013. As a result, District denied Student a FAPE because Parent was unable to properly prepare for the July 2013 IEP meetings. This issue states enough facts to put the

District on notice of the specific allegations and the facts supporting them to prepare for and participate in a resolution session, mediation and hearing. Issue 4 is therefore sufficiently pled.

Issue 5 alleges that District denied Student a FAPE for the 2013-2014 school year by failing to implement an October 12, 2012 Settlement Agreement that provided for stay put for transportation services to occupational therapy and physical therapy treatments during the first week of the 2013-2014 school year. Student contends he did not receive those services during the first week of school, or on September 18, 2013 and October 10, 2013 as a result of District's failure to provide transportation. This issue states enough facts to put the District on notice of the specific allegations and the facts supporting them to prepare for and participate in a resolution session, mediation and hearing. Issue 5 is therefore sufficiently pled.

Issue 6 alleges District denied Student a FAPE for the 2013-2014 school year by failing to provide Student with all accommodations during his public school credit elective Japanese class, as called for in his March 16, 2012 IEP. When read in conjunction with facts alleged elsewhere in the complaint, Issue 6 as defined in this Order states enough facts to put District on notice of the specific allegations to prepare for and participate in a resolution session, mediation and hearing. Issue 6 is sufficiently pled.

Issue 7 alleges that District denied Student a FAPE in the July 19, 2013 IEP by: 1) violating a 2012 settlement agreement, as amended, that defined his placement through August 14, 2013, and 2) offering an inappropriate placement at a nonpublic school too far from his home. Specifically, Student alleges that District prematurely proposed a change to his placement in the July 19, 2013 draft IEP in contravention with the settlement agreement; and that the proposed change in placement was inappropriate because it was a nonpublic school located 45 minutes away from his home. Issue 7 when read together with the facts alleged in the complaint states enough facts to put the District on notice of the specific allegations and the facts supporting them to prepare for and participate in a resolution session, mediation and hearing. Issue 7 is sufficiently pled.

ORDER

1. Issues 1, 2, 3, 4, 5, 6, and 7 of the complaint, as defined in this Order, are sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

2. All other allegations by Student in the second amended complaint are insufficient to state a claim, other than what is defined in this Order. Because this is Student's third attempt to plead sufficient issues, Student will not be given further leave to amend the complaint under this Order. If Student wishes to pursue any issue not identified by this order, Student shall file a new due process complaint, stating only those issues.

3. The matter shall proceed to hearing on Issues 1 through 7, as defined in this Order, only.

4. All dates previously set are confirmed.

Dated: November 22, 2013

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings