BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017061350
v.	ORDER DETERMINING STUDENT'S COMPLAINT TO BE PARTIALLY SUFFICIENT AND PARTIALLY INSUFFICIENT AS PLED
ELK GROVE UNIFIED SCHOOL DISTRICT.	

On June 29, 2017, Parent on behalf of Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming the Elk Grove Unified School District. On July 14, 2017, District timely filed a notice of insufficiency 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. (20 U.S.C. § 1415(b) & (c).) 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 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. (20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).) 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. (See H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.)

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint." (Sen. Rep. No. 108-185,

[1] A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 U.S.C. section 1415(b)(7)(A).

supra, at p. 34.) 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. (*Alexandra R. ex rel. Burke v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, CIV. 06-CV-0215-JL) 2009 WL 2957991[nonpub. opn.]; *Escambia County Bd. 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, 8:04CV2657T24EAJ) 2005 WL 2850076 [nonpub. opn.]; but cf. *M.S.-G v. Lenape Regional High School Dist. Bd. of Educ.* (3d Cir. 2009) 306 Fed.Appx. 772, 775 [nonpub. opn.].) Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge. (*Assistance to States for the Educ. of Children with Disabilities & Preschool Grants for Children with Disabilities* (Aug. 14, 2006) 71 FR 46,540-46541, 46699.)

DISCUSSION

Student's complaint alleges that District procedurally and substantively denied her a free appropriate public education for several reasons for school years 2015-2016, 2016-2017, and 2017-2018. District contends that many of the sub-issues, as discussed below, are deficient because they fail to state facts supporting the alleged FAPE violations.[2]

SUFFICIENCY OF STUDENT'S COMPLAINT

Lack of Measurable Goals in School Years 2015-2016 and 2016-2017 (Issues 1(c) and 2(c))

Student's Issue 1(c) alleges that District failed to provide measurable goals in all areas of need. District contends that the goal is insufficient because there are no facts related to the measurability of Student's goals. However, the complaint specifically states that Student was assessed in various areas, that the assessments showed that Student had needs in the areas assessed, and that District failed to offer goals in those areas. Student specifically states that District failed to develop goals in the areas of fine and gross motor, sensory processing, and in conversational skills. Likewise, for the 2016-2017 school year, Student contends in her Issue 2(c) that District failed to develop goals for her in her annual individualized education program dated October 18, 2016, in the areas of attention, sensory processing, expressive language, including conversational speech, and in fine and gross motor skills, despite the fact that assessments had showed Student had needs in those areas. These facts are sufficient to put District on notice of the areas in which Student contends District should have written goals but did not, and the reasons Student believes goals should

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[2] District only specifically contends that Student's issues 1(c), 1(e), 1(g), 1(h), 2(c), 2(e), 2(f), 2(g), 2(i), and 3 are deficient. Therefore, for purposes of this Order, Student's remaining issues are deemed sufficient as pled.

have been written in the specified areas of need. Student's Issues 1(c) and 2(c) are sufficient as pled.

Predetermination in School Years 2015-2016 and 2016-2017 (Issues 1(e) and 2(f))

Student's Issue 1(e) alleges that District predetermined her IEP for the 2015-2016 school year. District contends that Student's Issue 1(e) is insufficient because Student does not state what portion of the IEP was predetermined or how it was predetermined. Student's supporting facts only address predetermination in the context of transportation. Student contends that she required transportation to and from school because of her unique needs. She states that the issue of transportation was never discussed at her IEP team meeting held on November 19, 2015. She states that in spite of the lack of discussion, District denied her transportation, and, therefore, District's decision to deny the transportation was predetermined. To the extent that Student's allegation of predetermination relates to the issue of transportation, Issue 1(e) of her complaint is sufficiently pled. To the extent Student contends that District predetermined other facets of the November 19, 2015, her complaint is insufficient. Unless Student amends her complaint, the only issue of predetermination that will go forward is the contention that District predetermined its decision to deny Student transportation in the November 19, 2015 IEP.

Student's issue 2(f) alleges that District predetermined her IEP for the 2016-2017 school year. To the extent that the allegation is related to the lack of offer of transportation in the November 19, 2015 IEP, which was operative through October 18, 2016, when District held Student's annual IEP team meeting and made an annual offer of FAPE, the issue is sufficiently pled. However, Student alleges no additional facts supporting a contention that District predetermined any aspect of its October 18, 2016 IEP offer. Therefore, if it was Student's intention to allege that District predetermined any aspect of the October 18, 2016 IEP, Student will need to file an amended complaint.

In paragraph 31 of her complaint, Student alleges that District held an addendum IEP team meeting on April 19, 2017, to review the results of an independent physical therapy assessment. Student states that the assessment recommended District provide her with physical therapy services, but that District failed to add the services to Student's IEP. Student then contends that District predetermined its denial of services. Student fails to state any supporting facts as to why she believes District's denial was predetermined. To the extent that Student intended her issue 2(f) to encompass the April 19, 2017 addendum IEP, Student has failed to state any facts in support of such an allegation. Student's complaint is thus insufficient as it pertains to her factual contention in paragraph allegation that District's denial of physical therapy services at the April 19, 2017 addendum IEP was predetermined.

Failure to Document IEP Team Meetings in the 2015-2016 School Year (Issue 1(g))

Student's Issue 1(g) alleges that District failed to adequately document her IEP team meetings during the 2015-2016 school year. The facts in support of this contention are at paragraphs 14 and 18 of the complaint. In paragraph 14 Student states that District failed to

document the purpose of an addendum IEP team meeting convened on January 15, 2016. Student also states that the IEP developed for that date is completely blank except for signatures of the team members. In paragraph 18, Student states that District convened an IEP meeting on June 15, 2016, but failed to document the meeting. These two allegations are sufficient to put District on notice of the allegations in Issue 1(g).

Failure to Timely Provide an Assessment Plan During the 2015-2016 and 2016-2017 school years (issues 1(h) and 2(e))

District contends that Student's issue 1(h), which alleges that District failed to provide her with a timely assessment plan, is insufficient because District cannot determine what areas Student believes District should have provided a plan. As District correctly points out, the only reference to an assessment plan is Student's contention that Parent requested a physical therapy assessment on May 23, 2016, but that District did not provide her a plan before the end of the school year. This allegation is sufficient to the extent that Student only means to allege the failure to provide Parent with a timely assessment plan for a physical therapy assessment. If Student's intent was to encompass other District assessments, she will have to file an amended complaint containing facts supporting that contention.

Student's issue 2(e) also alleges a failure to provide Parent with a timely assessment plan for the 2016-2017 school year. There are no specific facts in Student's complaint for this school year to support this allegation. Student's issue 2(e) is insufficient as pled.

Assessing Student Without a Signed Assessment Plan During the 2016-2017 School Year(Issue 2(g))

District contends that Student's contention in Issue 2(g), alleging that it assessed her without having a signed assessment plan, does not provide enough facts to support the allegation. Student states, at paragraph 21 of her complaint, that District assessed her in the area of physical education on August 24, 2016, but that her educational records do not contain a signed assessment plan from Parent consenting to the assessment. These facts are sufficient to put District on notice that of Student's allegation that the assessment occurred without her Parent's consent. Issue 2(g) is sufficient as pled.

Failure to Develop an Updated Health Plan During the 2016-2017 School Year (Issue 2(i))

District contends that Student's complaint does not contain sufficient facts to support her contention that District improperly failed to update her health plan during the 2016-2017 school year. However, at paragraph 32 of her complaint, Student states that she had a serious seizure at school on June 12, 2017, and had to be transported by ambulance (ostensibly to receive medical care after the seizure). Student contends that District should have convened an IEP team meeting and updated her health plan after she had the seizure at school, but that

District failed to do so. These are sufficient facts to put District on notice of the allegations against it. Issue 2(i) is sufficient as pled.

Failure to Offer a FAPE for the 2017-2018 School Year (Issue 3)

In Issue 3, Student incorporates by reference her facts supporting all her allegations that pertain to her October 18, 2016 IEP. However, it is impossible to determine which of the issues nine contentions Student raises in Issues 2(a) through 2(i) pertain to the 2017-2018 school year. Does Student contend that, in addition to not offering her occupational therapy services, physical therapy services, measurable goals, and transportation, District also failed to provide a timely assessment plan, predetermined her IEP, conducted another assessment without Parent's consent, failed timely to convene an IEP team meeting, and/or again failed to update her health plan? Because of the lack of specificity as to Issue 3, and the broad brush with which Student has defined the issue, District would have to guess as to the scope of the issue. For these reasons, Student's Issue 3 is insufficient in its entirely.

SUFFICIENCY OF STUDENT'S PROPOSED RESOLUTIONS

District contends that Student's proposed resolutions do not relate to specific allegations in her complaint and are therefore insufficient. As remedies, Student requests that OAH do the following:

a. Find District denied Student a FAPE from the 2015-2016 school year through the 2017-2018 school year;

b. Order District to reimburse Parent for the cost of privately obtained services;

c. Order District to fund compensatory education for Student;

d. Order District to prospectively provide Student with certain related services; and,

e. Order District to convene an IEP team meeting to develop an updated health plan for Student.

A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (20 U.S.C. §1415(b)(7)(A)(ii)(IV).) The proposed resolutions stated in Student's complaint are sufficiently defined, and meet the statutorily required standard of stating a resolution to the extent known and available to Student at the time.

ORDER

1. Issues 1(a), 1(b), 1(c), 1(d), 1(f), 1(g), 2(a), 2(b), 2(c), 2(d), 2(g), and 2(h) of Student's complaint are sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).

2. Issues 2(e) and 3 of Student's complaint are fully insufficient as pled under title 20 United States Code section 1415(c)(2)(D).

3. Issues 1(e) and 2(f) of Student's complaint, alleging predetermination, are only sufficient to the extent the issues contend that District predetermined its decision not to offer Student transportation in the November 19, 2015 IEP. The issue of predetermination is insufficient as to any other aspect of Student's complaint, including, but not limited, to her allegation that District predetermined its decision not to offer Student physical therapy services at the April 19, 2017 IEP team meeting.

4. Student's Issue 1(h) is only sufficient as to Student's contention that District timely failed to provide Parent with an assessment plan for a physical therapy assessment after Parent requested one on May 23, 2016.

5. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).[3]

6. The amended complaint shall comply with the requirements of title 20 U.S.C. section 1415(b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.

7. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues 1(a), 1(b), 1(c), 1(d), 1(f), 1(g), 2(a), 2(b), 2(c), 2(d), 2(g), 2(h), and those portions of Issues 1(e), 1(h), and 2(f) of Student's complaint found sufficient, as indicated in paragraphs 1, 3 and 4 of this Order.

DATE: July 18, 2017

DocuSigned by:
Peter Paul Castillo for
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DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings

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