BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. FALLBROOK UNION HIGH SCHOOL DISTRICT.	OAH CASE NO. 2013100130 ORDER DENYING NOTICE OF INSUFFICIENCY

On September 30, 2013 Student filed a Due Process Hearing Request[1] (complaint) naming Fallbrook Union High School District (District). On October 11, 2013, 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 alleges three issues, along with proposed resolutions applicable to all issues.

In Issue 1, Student alleges that in the spring of 2012, District denied him a FAPE by failing to find him eligible for special education services following evaluation by the District. Student alleges that he was failing three classes during the 2011-2012 school year, that his scores on the assessments indicated that he was at-risk in numerous areas, that he demonstrated signs of Attention Deficit Hyperactivity Disorder, and that he should have been found eligible for special education as Other Health Impaired (OHI). Student also alleges that the appropriate district staff did not attend the meeting to determine eligibility, and that the team did not consider all available information in its eligibility determination. Issue 1 alleges sufficient facts to put the District on notice of the issue and to prepare for and participate in a resolution session, mediation and a hearing.

In Issue 2, Student alleges that District denied Student a FAPE during the 2012-2013 school year by failing to find him eligible for special education and failing to offer him

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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).

special education services and supports. Student alleges that District did not address his attention and executive functioning difficulties, including his distractibility and slow processing speed, and, as result, Student struggled academically. Issue 2 alleges sufficient facts to put the District on notice of the issue and to prepare for and participate in a resolution session, mediation and a hearing.

In Issue 3, Student alleges that District denied Student a FAPE during the 2013-2014 school year by failing to offer appropriate goals, services and accommodations in his August 30, 2013 individualized education program (IEP). Student also alleges that District did not offer him an appropriate independent transition plan; that the services offered in Student's August 30, 2013 IEP were not specific and District did not describe frequency of services; that District offered specialized academic instruction but did not specify the amount of time or nature of the instruction; and that District failed to include accurate present levels of performance in the IEP. Although Student fails to allege when District found him eligible for special education services and supports or under what eligibility category, Issue 3 alleges sufficient facts to put District on notice of the issue and to prepare for and participate in a resolution session, mediation and hearing.

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: October 14, 2013

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings