BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2013020870
v.	ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT
RIVERSIDE UNIFIED SCHOOL DISTRICT.	

On February 25, 2013, Student filed a Due Process Hearing Request[1] (complaint) naming Riverside Unified School District (District) as respondent. On February 27, 2013, OAH issued a Scheduling Order of Dual Hearing Dates based on the issues raised in the complaint. The matter was set for two hearing dates because Student's complaint contained allegations pertaining to both expedited and non-expedited subject matter.

On March 11, 2013, District timely filed a Response to Complaint/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). Title 20 United States Code section 1415(c)(2)(D) requires that the sufficiency of the complaint be evaluated based on the face of the complaint.

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]

Title 20 United States Code section 1415(k)(3) permits a party to request an expedited hearing to appeal a decision regarding a disciplinary change of placement, such as placement in an alternative educational setting, or a manifestation determination regarding student's conduct. This section requires an expedited hearing to occur within 20 school days of the date the hearing is requested and for a decision to be rendered within 10 school days of the conclusion of the hearing. With respect to expedited hearing requests, there is no provision similar to that in title 20 United States Code section 1415(c)(2), allowing for the testing of the sufficiency of an expedited hearing request.

DISCUSSION

Student's complaint states two issues. Student's first issue is that he has been suspended multiple times without a proper manifestation determination, specifically, a manifestation determination meeting was held without Student's mother being present. Student's second issue is that District has failed to implement Student's IEP because his behavior support plan is not being followed and has been removed and he is being harassed

---

[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).

at school. Student alleges his "education is suffering" and his "credits are suffering," because District has not provided Student with appropriate behavior interventions and he is being harassed, provoked, "constantly agitated" and searched without cause by ground supervisors. Student's proposed resolutions include placement in appropriate classes with appropriate interventions, and sufficient services to meet his needs.

District contends the complaint is insufficient because the complaint does not state the basis upon which Student contends his behavior was a manifestation of his disability and District is unable to fully analyze Student's position, reconsider its position, or work out a resolution informally. District acknowledges that an NOI is not permitted with respect to expedited hearing requests. However, District cites two out of state cases for the proposition Student's complaint should be dismissed. Both cases, *Licking Heights Local School District* (Oh. SEA 2008) 108 LRP 15676 , and *Philadelphia City School District* (Penn. SEA 2008) 108 LRP 53609, involved motions to dismiss a complaint in an expedited matter. Although OAH has granted motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc.,) OAH does not grant motions to dismiss expedited matters. Therefore, because an NOI is not permitted with respect to expedited hearing requests, District's NOI as to the expedited matter is denied and the matter will not be dismissed.

As to the non-expedited portion of Student's complaint, the IDEA requires only a "description of the nature of the problem" (20 U.S.C. (b)(7)(A)(ii)(III)), a requirement liberally construed in light of the remedial and informal nature of the due process proceedings. Student's complaint identifies a single problem, i.e., District has failed to implement Student's IEP because his behavior support plan is not being followed or has been eliminated. The complaint contains the requisite facts including Student's date of birth, grade and the name of the school he is attending, and alleges facts relating to the problem. Essentially, these allegations are that, due to the failure to implement the IEP, Student is not making academic progress, and he is being provoked, agitated and searched without cause on campus. His proposed resolutions are stated. Thus, as to this narrow issue, Student has stated the issue, adequate related facts about the problem, and proposed resolutions sufficient to permit District to prepare for hearing and participate in a resolution session and mediation. Accordingly, the complaint is sufficient as to the following issue: Whether Student was denied a FAPE, during the statute of limitations period, because District failed to implement the behavior support plan in Student's operative IEP.

Should Student wish to proceed on any other issue, Student must file an amended complaint. An amended complaint must contain a description of the nature of each problem, adequate related facts about the problem and proposed resolutions. Pursuant to Education Code, section 56505, subdivision (e)(6), upon the request of a parent who is not represented by an attorney, OAH shall provide a mediator to assist the parent in identifying the issues and the proposed resolutions of the issues. Should Student's parents desire the assistance of a mediator, they must contact OAH at (916) 263-0880 to request assistance in formulating the issues in Student's complaint.

ORDER

1. The complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

2. The non-expedited portion of the hearing shall proceed on the sole issue of: Whether Student was denied a FAPE, during the statute of limitations period, because District failed to implement the behavior support plan in Student's operative IEP. If Student wishes to raise any other issues, Student needs to seek permission to file an amended complaint by filing the request with OAH. Any request to file an amended complaint shall contain a complete proposed amended complaint that states all issues Student wants to raise. If permission to file an amended complaint is granted, all decision timelines will be reset, District will be permitted an opportunity to conduct an informal resolutions session, and District may still file a notice of insufficiency as to the amended complaint, if District believes it is warranted.

3. All mediation, prehearing conference, and hearing dates in this dual matter are confirmed.

Dated: March 12, 2013

/s/
MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings