BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Matter of: | |
| PARENT ON BEHALF OF STUDENT, | OAH CASE NO. 2014110065 |
| v. | ORDER DENYING DISTRICT'S NOTICE OF INSUFFICIENCY |
| HEMET UNIFIED SCHOOL DISTRICT. | |

On October 2, 2014, Parents on behalf of Student filed with the Office of Administrative Hearings a Due Process Hearing Request[1] (complaint) naming Hemet Unified School District as respondent, commencing OAH matter number 2014100196. On October 8, 2014, Hemet filed with OAH a Notice of Insufficiency as to Student's complaint.

On October 14, 2014, OAH issued an order finding Student's complaint to be insufficient. Student was given leave to file an amended complaint complying with the requirements of title 20 United States Code section 1415(b)(7)(A)(ii), no later than 14 days from the date of the order; that is, on or before October 28, 2014.Student did not timely file an amended complaint in matter number 2014100196, and that matter was dismissed.

On October 29, 2014, in response to a due process complaint filed by District, Student filed a "cross complaint" which was, in fact, a request for due process hearing, commencing this matter. On November 5, 2014, District timely filed a Notice of Insufficiency as to Student's complaint in this matter, on grounds that Student's allegations are confusing and lack sufficient information to put District reasonably on notice of the claims against it. Student filed a response to the NOI on November 12, 2014. For the reasons discussed below, the NOI is denied.

## 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

[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).

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 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 41-page complaint alleges 11 issues. Although the complaint is burdened by excess and irrelevant information and a lack of organization, Student's issues satisfy liberal pleading requirements because the facts alleged are sufficient to put District on notice of the issues forming the basis of Student's claims. The complaint alleges that, in the two

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[3] 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

[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).

years preceding the complaint, Student displayed severe autistic behaviors that prevented him from accessing his education. In order to access his education, Student required placement in an autism program at school that utilized applied behavior analysis (ABA) to address Student's behaviors, in-home ABA services, and one-on-one occupational therapy services to assist with fine motor, sensory and auditory integration/therapeutic listening skills. Student contends that he had received in-school and in-home ABA services, one-on-one occupational therapy services, and auditory integration/therapeutic listening skills pursuant to a March 2, 2009 individualized education program, but that these services were inappropriately reduced at several IEP meetings held between October 20, 2012 through June 18, 2014.. The complaint describes District's offers of FAPE at each of Student's IEPs during this time frame.

Student's Issue 1 contends that District denied Student a FAPE by failing to place Student in an autism program that utilized ABA. Student contends that, prior to October 20, 2012, Student's IEP included in-school ABA supervision services for Student's support personnel. Beginning in the 2012-2013 school year, District allegedly placed Student in a special day class that District characterized as an autism program although it allegedly did not utilize ABA. Student contends that, relying on that incorrect characterization of the program, District discontinued Student's in-school ABA services previously provided for in his IEP.

Issue 2 alleges that District prevented Student's parents from meaningfully participating in the IEP process and denied Student a FAPE at Student's June 18, 2014 IEP meeting when it failed to discuss whether its proposed placement for Student was, in fact, an autism program.

Issue 3 contends that District denied Student a FAPE in the 2012-2013, 2013-2014, and 2014-2015 school years by: (i) discontinuing the integration/therapeutic listening therapy services that Student had received since his March 2, 2009 IEP; (ii) failing to assess Student's integration/therapeutic listening needs; and (iii) failing to offer Student one-on-one occupational therapy.

Issue 4 contends that District denied Student a FAPE by failing to provide Student the integration/therapeutic listening therapy services and one-on-one occupational therapy services offered in Student's March 2, 2009 IEP when Parents on December 16, 2013 revoked their previous consent to Student's December 17, 2012 IEP.

Issue 5 contends that District denied Student a FAPE from 2012 to the filing of the complaint by failing to provide Student adequate in-home ABA services. Student alleges that, at Student's February 13, 2013 IEP, the outside non-public agency providing the services recommended that they be discontinued, a recommendation that Parents opposed. Parents objected that Student's proposed ABA goals had not changed in two years and were inappropriate, as were the proposed present levels of performance, and that Student had made no progress on his ABA goals.

Issue 6 contends that District denied Student a FAPE by failing to have Student's ABA provider attend Student's December 17, 2012 and December 16, 2013 annual IEP meetings, because the provider's absence deprived Parents of the opportunity to question the provider regarding Student's ABA services and denied Parents their right to meaningfully participate in the IEP process.

Issue 7 contends that contends that District denied Student a FAPE by failing to have Student's ABA provider develop new in-home and in-school ABA goals for Student from 2012 to the filing of the complaint.

Issue 8 contends that District denied Student a FAPE by failing to provide Parents copies of certain specified Students ABA records after Parents requested them at Student's May 27, 2014 and June 18, 2014 IEP meetings.

Issue 9 contends that District denied Student a FAPE by failing to respond to Student's October 30, 2012, December 17, 2012, and February 13, 2013 requests for an independent psychoeducational evaluation until District filed a complaint on September 19, 2014 to defend the District's psychoeducational evaluation.

Issue 10 contends that District denied Student a FAPE by failing to have Student's general education teacher attend Student's June 18, 2014 IEP meeting.

Issue 11 contends that District denied Student a FAPE by failing to review Student's behavior support plan at Student's May 27, 2014 and June 18, 2014 IEP meetings.

Each of the issues described above when read in the context of the entire complaint sufficiently identifies the issues and adequate related facts about each issue to permit District to respond to the complaint and prepare for and participate in a resolution session, mediation and due process hearing.

As a proposed resolution, Student seeks ABA services by a non-public agency at home and at school; on-on-one occupational therapy to address Student's fine motor, sensory and auditory integration/therapeutic listening skills; a psychoeducational evaluation to be conducted by an independent assessor at District expense; and compensatory education including: (i) two years of in-home one-on-one ABA services, and in-school supervision to support personnel; (ii) two years of compensatory auditory listening/therapeutic listening services to be provided both in-home and in-school. Student's proposed resolutions are also sufficient.

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.

DATE: November 12, 2014

**/s/**

ROBERT MARTIN
Administrative Law Judge
Office of Administrative Hearings