BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. BRENTWOOD UNION SCHOOL DISTRICT.	OAH Case No. 2017060351 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On June 7, 2017, Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming Brentwood Union School District. On June 22, 2017, Brentwood 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). The complaint is deemed sufficient unless a party notifies OAH and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements. (20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).)

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.)

[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).

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, *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

Brentwood timely filed its notice of insufficiency as to Student's complaint. Brentwood contends that two of Student's identified issues are insufficiently pled as they fail to specify the time frame of the alleged violations. Although Student does not separately number each legal issue, Student has raised five legal issues with several sub-issues. Brentwood specifically challenges the sufficiency of Student's first and third issues.

Student has provided a detailed synopsis of the facts related to her complaint. The facts alleged in Student's complaint are sufficient to put Brentwood on notice of the issues forming the basis of the complaint. Student's complaint identifies the issues and adequate related facts about the problems to permit Brentwood to respond to the complaint and participate in a resolution session and mediation, and to prepare for hearing if necessary.

In her first issue, Student claims that Brentwood denied her a free appropriate public education by failing to: offer an appropriate program and placement that allowed her to obtain academic benefit and to prevent regression; allow meaningful participation by considering Parent concerns; consider her private assessments; assess in all areas of suspected disability; offer necessary supports and services; accurately identify present levels of performance; and draft appropriate goals in all areas of need. As currently sated, it is difficult to discern how some of these sub-issues differ from Student's other claims. However, the time frame for this issue and other specifics including which goals were not appropriate or otherwise missing, and in which areas Brentwood failed to assessed can be clarified, with reference to Student's alleged facts, during the prehearing conference. Given the Individuals with Disabilities Education Act's liberal pleading requirements, this issue is found sufficient.

In issue two, Student claims that Brentwood denied her a FAPE by failing to conduct a complete and thorough assessment in all of her areas of suspected disability in preparation for the April 28, 2016, August 15, 2016, January 20, 2017, February 6, 2017, and April 24,

2017 IEP team meetings. This issue is sufficiently pled. Whether this issue may be duplicative of the assessment sub-issue contained in the first issue can be clarified at the prehearing conference.

In issue three, Student claims a denial of FAPE based on Brentwood's failure to review or revise her IEP's to ensure that she made progress on her goals and received educational benefit. The time frame involved and any overlap with the first issue can be clarified at the prehearing conference. This issue is found sufficient.

In issue four, Student alleges that Brentwood denied her a FAPE when it failed to consider her request for reimbursement for Core Academy and failed to file a request for due process hearing after Parent's notification on April 11, and 30, 2017, that Parent did not consider the proposed IEP to offer a FAPE. This issue is sufficiently pled.

Finally, in issue five, Student claims that Brentwood denied her a FAPE because it failed to offer an appropriate placement with all necessary supports and services at the January 20, 2017, February 6, 2017, and April 24, 2017 IEP team meetings. This issue is sufficiently pled.

Therefore, Student's statement of the claims is sufficient.

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 meet the statutorily required standard of stating a resolution to the extent known and available to her at the time.

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: June 27, 2017

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Theresa Ravandi
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THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings