BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. RIALTO UNIFIED SCHOOL DISTRICT,	OAH Case No. 2018060980
RIALTO UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2018090418 ORDER DETERMINING ISSUE TWO OF DISTRICT'S DUE PROCESS COMPLAINT INSUFFICIENT

On September 12, 2018, Rialto Unified School District filed a Request for Due Process Hearing with the Office of Administrative Hearings, naming Student. On September 17, 2018, Student timely filed a Notice of Insufficiency as to Issue Two of Rialto'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, *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

Rialto's complaint alleges two issues: 1) whether Rialto offered Student a free appropriate public education in the May 25, 2018 individualized education program, such that it may implement the IEP over Parent's objection; and 2) whether the assessments conducted as part of the triennial review covered all areas of suspected disabilities and were legally sufficient. As proposed resolutions, Rialto seeks a finding that it offered Student a FAPE and may implement the May 25, 2018 IEP; and a finding that the triennial assessments were legally sufficient so that Rialto may decline any request to fund independent educational evaluations.

The complaint contains facts sufficient to put Student on notice of the nature of the problem pertaining to Issue One. Specifically, the complaint includes the date of the IEP meeting at issue and the offer of placement and services Rialto seeks to implement over Parent's objection. Therefore, Issue One is sufficient.

The complaint does not contain facts sufficient to put Student on notice of the nature of the problem pertaining to Issue Two. The complaint references several assessments, including psychoeducational, occupational therapy, physical therapy, adapted physical education, speech and language, and health assessments, completed by Rialto or a provider contracted with Student's nonpublic school of attendance. However, Issue Two fails to specify which assessments were part of Student's triennial review, or which assessments Rialto is alleging were legally sufficient, such that Student is not entitled to the independent educational evaluations requested. Without such information, Issue Two is vague and does not provide Student with sufficient information to prepare for mediation and/or a due process hearing. Therefore, Issue Two is insufficient.

ORDER

1. Issue One of Rialto's complaint is sufficiently pled under title 20 United States Code section 1415(b)(7)(A)(ii).

2. Issue Two of Rialto's complaint is insufficiently pled under title 20 United States Code section 1415(c)(2)(D).

3. Rialto shall be permitted to file an amended complaint as to Issue Two under title 20 United States Code section 1415(c)(2)(E)(i)(II).[1] The amended complaint shall comply with the requirements of title 20 United States Code section 1415(b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this Order.

4. If Rialto fails to file a timely amended complaint, the hearing shall proceed only as to Issue One in the complaint.

DATE: September 18, 2018

DocuSigned by:
Tara Doss
0D223C0D8032412...

TARA DOSS
Administrative Law Judge
Office of Administrative Hearings

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