BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. TORRANCE UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2014010254 ORDER DENYING DISTRICT'S NOTICE OF INSUFFICIENCY

On January 8, 2014 Student filed a Due Process Hearing Request[1] (complaint) naming Torrance Unified School District (District). On January 23, 2014, timely District filed a Notice of Insufficiency (NOI) as to Student's complaint. For the reasons discussed below, the complaint is sufficient and 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 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 consists of 43 pages of facts and allegations of a variety of violations by District of the Individuals with Disabilities Education Act (IDEA). He alleges he is 13 years old; he became eligible for special education under the category of speech or language impairment in March 2007; during the 2012-2013 school year Parents obtained private psychoeducational and neuropsychological assessments in which the assessor concluded Student had a variety of challenges in expressive and receptive language; District held an individualized education plan (IEP) meeting in February 2013 to revise and added several accommodations; during the last semester of the 2012-2013 school year and the first semester of the 2013-2014 school year Student was assessed both privately and by District in multiple areas; Student filed for due process in spring 2013 and resolved the matter with District; at Student's December 2013 IEP District concluded Student did not meet eligibility criteria for special education as specific learning disability or language and speech and agreed to provide services in his April 2013 IEP as "stay put"; and Parents disagreed with District's conclusions and filed this due process complaint.

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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).

Student's complaint lists a variety of issues, including: District denied Student a free appropriate public education by: failing to consider Parent's concerns in December, 2013; failing to consider private assessments conducted in the fall of 2013; predetermination of eligibility prior to the December 2013 IEP; failing to provide Parents with prior written notice; failing to appropriately respond to Parents' request for an IEE at public request; failing to implement the accommodations called for in Student's April 2013 IEP; failing to appropriately assess in all areas of suspected disability; failing to find Student eligible for special education as speech and language impaired and specific learning disability; and deprived Parents of the opportunity for meaningful participation in the development of Student's educational program. The complaint also lists a variety of proposed resolutions associated with the claims in the complaint.

District's NOI takes issue with only one of the 154 paragraphs of the complaint, specifically paragraph 110, which is embedded within Student's "Issue 1," and identified as "Violation of Cal. Educ. Code § 56346(3)." Paragraph 110 asserts that District failed to implement any of the accommodations provided for in the April 2013 IEP. District asserts paragraph 110 fails to specifically identify which of the accommodations District failed to implement, except for the accommodation of failing to provide "written instructs" asserted in paragraphs 34-38,70, and 84-85. District contends that Student should be limited to challenging only that single accommodation, or be required to specify all accommodations he believes were not implemented. District's objections to Paragraph 110 are not persuasive. Student has alleged sufficient facts in his complaint to state a claim and to put District on notice of the claim, such that it can prepare for and participate in a resolution session, mediation, and due process hearing.

Moreover, District has not objected to the totality of the complaint, and based on the discussion above, the remainder of Student's claims, related facts, and proposed resolutions are sufficient. Therefore, the NOI is denied.

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: January 28, 2014

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings