BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
DEL MAR UNION SCHOOL DISTRICT,	OAH CASE NO. 2013110845
v.	ORDER GRANTING IN PART STUDENT'S NOTICE OF INSUFFICIENCY
PARENT ON BEHALF OF STUDENT.	

On November 25, 2013 Del Mar Union School District (District) filed a Due Process Hearing Request[1] (complaint) naming Student. On November 27, 2013, Student's attorney timely filed a Notice of Insufficiency (NOI) on Student's behalf. For the reasons discussed below, the NOI is granted in part as to Issues 2(b) and 2(g), only.

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

District's complaint appropriately identifies Student, her eligibility category, and her name, age, address, and school. District alleges that it convened an individualized education program (IEP) meeting for Student on June 10, 2013; Student's father (Parent) attended the meeting and participated; the team considered and discussed the results of triennial assessments of Student; it developed goals and objectives in numerous areas of need; and it offered placement in a general education classroom with specialized academic instruction, and designated instructional services in the areas of occupational therapy, behavior intervention, counseling, and adapted physical education. District alleges that Parent did not consent to the IEP at the meeting; that over the summer and during the early fall District exchanged correspondence with Parents' attorney regarding changes to the IEP; that the IEP team reconvened on November 1, 2013 to discuss Parents' concerns; that changes were made to the IEP; and that Parents did not consent to the revised IEP.

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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).

Issue One seeks a finding that the June 10, 2013 IEP, as revised on November 1, 2013, constitutes a FAPE in the least restrictive environment. Issue one is supported by the facts alleged in the complaint, as described above, and is sufficiently pled to put Student on notice of the issue to respond to the complaint and prepare for and participate in mediation and hearing.

Issue Two is framed as seven sub-issues, all of which seek findings, as a proposed resolution, that District procedurally complied with various requirements of the IDEA in connection with the development, offer and implementation of Student's June 10, 2013 IEP, as revised in November 2013, and therefore District did not deny Student a FAPE. Each sub-issue will be addressed separately.

Issue 2(a) seeks a finding that District did not deny Student a FAPE by failing to ensure that "no pupil shall be required to participate in all or part of any special education program unless the parent consents in writing." This issue as written is overly broad and not supported by facts as it pertains to "no pupil." However, when read in the context of the facts alleged, the issue as to Student is whether District denied Student a FAPE by failing to ensure that she was not required to participate in all or part of any special education program unless the parent consented in writing. District alleges that it continued to negotiate the terms of the June 10, 2013 IEP offer with Student's attorney through summer and fall 2013 and that Parents did not sign the IEP as revised in November 2013. As framed in this Order and when read in the context of the entire complaint, Issue 2(a) states sufficient facts to put Student on notice of the issue to respond to the complaint and prepare for and participate in mediation and hearing.

Issue 2(b) seeks a finding that District did not deny Student a FAPE by failing to adhere to the 15-day timeline for the development of "the proposed assessment plan." The only reference in the complaint to assessments is the triennial assessments reviewed by the June 10, 2013 IEP team. District alleges no facts relating to new assessments, a proposed assessment plan, or related timeline. Accordingly, this issue is insufficient and District will be given leave to amend the complaint.

Issue 2(c) seeks a finding that District did not deny Student a FAPE by failing to consider "strengths of the child, parental concerns, academic, developmental and functional needs of the child in developing the IEP." District alleges that at the June 10, 2013 IEP meeting the IEP team reviewed, considered, and discussed Student's triennial assessments, and that during the summer and fall of 2013 District addressed and considered parental concerns regarding Student's needs, and Parents' concerns about the proposed placement and services in the IEP. When read in context of the facts alleged in the complaint, Issue 2(c) states sufficient facts to put Student on notice of the issue to respond to the complaint and prepare for and participate in mediation and hearing.

Issue 2(d) seeks a finding that District did not deny Student a FAPE by failing to ensure Student's Parents the right to present information to the IEP team in person or through a representative and the right to participate in meetings. The complaint alleges that Student's

Parent attended the June 10, 2013 IEP and participated; that Parents and/or their counsel were not available to participate in a subsequent meeting until November 1, 2013; and that an IEP team meeting was held on November 1, 2013, at which time the IEP team responded to requests articulated in a seven-page letter from Student's attorney dated August 21, 2013. Issue 2(d) states sufficient facts to put Student on notice of the issue to respond to the complaint and prepare for and participate in mediation and hearing.

Issue 2(e) seeks a finding that District did not deny Student a FAPE by failing to adhere to the IEP team meeting notification requirements. District does not specifically allege how it gave Parents notice of the June 10, 2013 IEP meeting. However, it alleges that Parent attended and participated in the June 10, 2013 meeting, and that the November 1, 2013 meeting was scheduled to accommodate the convenience of the Parents and/or their attorney. Therefore, when read in the context of the facts alleged in the complaint, Issue 2(e) states sufficient facts to put Student on notice of the issue to respond to the complaint and prepare for and participate in mediation and hearing.

Issue 2(f) seeks a finding that District did not deny Student a FAPE by failing to implement the June 10, 2013 IEP. The complaint alleges that District did not have parental consent to implement the June 10, 2013 IEP, as revised in November 2013, and that it continued to negotiate the terms of the June 10, 2013 IEP with Student's counsel from summer 2013 through the November 1, 2013 IEP. One can imply from the facts that District did not implement the entirety of the June 10, 2013 IEP. Therefore, when read in the context of the facts alleged in the complaint, Issue 2(e) states sufficient facts to put Student on notice of the issue to respond to the complaint and prepare for and participate in mediation and hearing.

Issue 2(g) seeks a finding that District did not deny Student a FAPE by "failing to provide prior written notice before refusing, initiating or changing Student's identification, evaluation, or educational placement." District alleges in its factual summary that it proposed a placement and services for Student in the June 10, 2013 IEP. However, aside from that fact, the complaint alleges no facts that Parents requested a change in Student's identification, evaluation, or educational placement which District rejected; that Parents refused any proposed changes by District requiring prior written notice; that District provided prior written notice, and, if it did, when it did so. This issue is not supported by facts that give it any meaning in the context of the complaint. Accordingly, it is insufficient, and District will be given leave to amend the complaint. If District amends, it must state specific facts that support sub-issue 2 (g), including when and what changes in Student's identification, evaluation or educational placement Parents or District proposed, and when District gave prior notice to Parents.

ORDER

1. Issues 1, 2(a), (c), (d), (e), and (f), of District's complaint are sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

2. Issues 2(b) and 2(g) of District's complaint are insufficiently pled under Title 20 United States Code section 1415(c)(2)(D).

3. District shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).[8]

4. 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.

5. If District fails to file a timely amended complaint, the hearing shall proceed only on Issues 1, 2(a), (c), (d), (e) and (f) of District's complaint.

6. All hearing dates previously scheduled are confirmed, unless otherwise ordered.

Dated: December 3, 2013

/s/
ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings

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