BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENTS ON BEHALF OF STUDENT,	OAH Case No. 2016120825
v.	ORDER FINDING STUDENT'S COMPLAINT TO BE SUFFICIENT IN PART AND INSUFFICIENT IN PART
MOJAVE UNIFIED SCHOOL DISTRICT.	

On December 20, 2016, Parents on behalf of Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming the Mojave Unified School District. On December 30, 2016, District timely filed a joint Notice of Insufficiency and Motion to Dismiss 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).

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,

[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).

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

District has filed a joint Notice of Insufficiency and Motion to Dismiss, conflating arguments regarding the sufficiency of Student's allegations with arguments pertaining to what District contends are issues improperly brought before OAH.

It is inappropriate to file joint motions. This order will only address those arguments District raises as to the sufficiency of Student's complaints. District's motion to dismiss shall be addressed in another order. District is directed to file separate motions in the future.

Student's complaint contains 19 allegations, some of which contain sub-parts. District contends that issues 4, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, and 19, are insufficient as plead.

In issue 4, Student alleges that District failed to meet her needs in the areas of cognitive development because District did not development goals for her in the area of play and failed to reference Student's areas of interest or what motivates her. District contends that issue 4 is insufficient because cognitive development is a medical issue and not an issue that pertains to whether a school district provided a Student with a free appropriate public education. The scope of OAH jurisdiction is properly addressed in a separate motion to dismiss. As stated, Student's issue 4 puts District on notice of the facts Student contends supports her allegation of failure to meet her cognitive needs. Issue 4 is sufficient as plead.

In issue 8, Student alleges that District failed to meet her needs in the areas of social studies and in science as her education with District did not include those subjects. District argues that it is not required to provide early social studies and science instruction. District also contends that Student failed to provide necessary facts in support of her claim. District fails to state what material facts are missing from the allegation. To the extent that District argues that it is not required to provide the instruction in the stated areas, that argument is not grounds for a notice of insufficiency. To the extent District contends that the issue is insufficient as plead, its argument is not persuasive. Student clearly states that she was

denied a FAPE because she did not receive instruction in social studies and science. Issue 8 is sufficient as plead.

In issue 9, Student contends that District failed to meet her social needs. Student contends that the mainstreaming opportunities District provided to her were inadequate and that District failed to develop adequate social goals for her since Student transferred into District. Issue 9 is sufficient as plead.

In issue 11, Student contends District failed to meet her needs in the area of adaptive skills. Student contends that District should have focused on developing Student's independent living skills outside the context of school, but failed to do so. District contends that there is no such thing as adaptive skills in an educational context. District's argument addresses the basis for Student's issue rather than whether the issue is sufficient as plead. Although District contends that it cannot decipher the issue and believes that Student may be referring to the need for transition services, it is clear from Student's complaint that she does not contend that District was required to provide her with a transition plan or with transition services during the time frame covered by the complaint. Student contends that District should have addressed her adaptive living skills but failed to do so. Issue 11 is sufficient as plead.

In issue 12, Student contends that District failed to meet her needs in the areas of fine motor development. Student fails to state what unique needs she had in the area of fine motor skills that District failed to address. Student fails to state facts indicating what her needs were and how District failed to meet them. Student fails to state what District should have been doing to address her fine motor needs. For these reasons, issue 12 is insufficient as plead.

In issue 13, Student contends that District failed to meet her gross motor needs because it did not address her habit of toe-walking. Although Student does not specify which of her individualized education program documents failed to include any service to address this problem, it is inferred that Student is referencing the entire time she has been enrolled in District, since that time frame falls within the applicable two-year statute of limitations. Issue 13 is sufficient as alleged.

In issue 14, Student contends District has ignored her need for home-based services and community-based services, and has not provided Student's parent with training. Student fails to state what type of services she requires that relate to her education. She fails to state what type of parent-education District should have provided to her parents and why her parents require that type of education. Student also fails to state how these undefined services are related to her education at school. To the extent that Student contends that District was responsible for guiding Student's parents to regional center services or how to obtain services through parents' insurance, Student fails to state any basis for District having that responsibility under the Individuals with Disabilities Education Act. Issue 14 is insufficient as plead.

In issue 15, Student contends that District failed to provide her with safe transportation to school, causing her to miss 28 days of instruction. Student contends that she was molested by another, much older student, on the school bus, which District failed to prevent, and which caused her to lose instructional time. However, other than referencing the incident on the bus, Student has failed to allege facts as to how the one-time incident caused her to miss 28 days of instruction. Student fails to state when the incident occurred, when she missed school, why she missed school, and when, if ever, she returned to school. Student fails to state if her parents attempted to discuss the transportation issue with District and what, if any, was District's response. For these reasons, Issue 15 is insufficient as alleged.

In issue 16, Student contends that District failed to consider the impact of Student's disability or address the long-term outcomes for Student's disability. Student also contends that District failed to advise Student's parents of the long-term outcome for Student's disability. It is unclear what Student is attempting to allege as a violation of District's obligation to provide her with a FAPE in the context of this issue. Student states in her complaint that she does not contend that District was required to provide her with a transition plan or transition services at this stage of her education. It is therefore uncertain what Student is attempting to allege or how the allegations might relate to a denial of FAPE. For these reasons, issue 16 is insufficient as alleged.

In issue 17, Student contends that District committed a procedural violation by failing to provide her with a one-on-one aide when she transferred into District, as required by Student's last agreed-upon and implemented IEP from her previous school district. This allegation is clear and unambiguous and is sufficient as alleged. However, the remainder of issue 17 fails to state any supporting facts with regard to Student's vague references to other possible procedural violations. To the extent Student intended to allege additional procedural violations, those allegations are not supported by the facts stated in issue 17. Other than the issue pertaining to the alleged failure to provide a one-on-one aide, the remainder of issue 17 is insufficient as plead.

In issue 18, Student alleges that District failed to provide her with necessary social work services. Student appears to be stating that District was obligated to somehow assure that Student accessed services that her health insurance might provide to her. However, Student fails to allege any facts linking this alleged violation to a denial of FAPE under federal or state law. For these reasons, issue 18 is insufficient as plead.

In issue 19, Student contends that District has discriminated against her in violation of Section 504 of the Rehabilitation Act of 1973. District contends that OAH does not have jurisdiction over this issue. That argument is properly brought as a motion to dismiss, and will be address in a separate order. For purposes of a notice of insufficiency, issue 19 is sufficient as alleged.

ORDER

1. Issues 1 through 11, 13, the portion of issue 17 alleging a failure to provide Student with a one-on-one aide, and issue 19 of Student's complaint are sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).

2. Issues 12, 13, 14, 15, 16, all other allegations in issue 17, and issue 18 of Student's complaint are insufficiently pled under title 20 United States Code section 1415(c)(2)(D).

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

4. The amended complaint shall comply with the requirements of title 20 U.S.C. section 1415(b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues 1 through 11, 13, the portion of issue 17 described in paragraph one of this Order, and issue 19 in Student's complaint.

DATE: January 4, 2017

DocuSigned by:
Darrell Lepkowsky
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DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings

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