BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. GLENDALE UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018030174 ORDER DETERMINING DUE PROCESS COMPLAINT TO BE PARTIALLY SUFFICIENT AND PARTIALLY INSUFFICIENT

On March 5, 2018, Parents on behalf of Student filed a request for due process hearing (complaint) with the Office of Administrative Hearings naming Glendale Unified School District.

On March 19, 2018, District timely filed a combined motion to dismiss Student's complaint and notice of insufficiency. This Order will only address District's notice of insufficiency. District's motion to dismiss will be addressed in a separate order, of which Student has until March 22, 2018, to reply.[1]

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

[1] District is cautioned that in the future it should file separate motions. Filing subsequent combined motions may result in OAH declining to rule on one or both motions.

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

Student's complaint consists of two issues, each of which contains five sub-issues. Some of the issues are sufficient as pled while others fail to meet the minimum standard of sufficiency.

District first argues that Student's instant complaint is almost identical to a previous complaint Student filed two years ago, which was resolved through a settlement agreement between the parties. District is correct that with a few minor changes to dates and the addition of a couple of allegations, the two complaints are basically word for word the same. It is troubling that Student merely cut and pasted the instant complaint from the prior complaints. However, for purposes of determining the sufficiency of a complaint, prior due process filings are irrelevant to the analysis of whether a complaint meets the minimal sufficiency standards required by the Individuals with Disabilities Education Act. Some of Student's issues, as discussed below, meet that standard, irrespective of whether the allegations have been recycled from a previous complaint.

Student contends that for the 2016-2017 and 2017-2018 school years, District failed to offer him a free appropriate public education. Issues 1(a), 1(b), and parts of 1(c), and issues 2(a), 2(b), and parts of 2(c) fail to contain sufficient information and facts to put District on notice of the issues forming the basis of the complaint to permit District to respond to the complaint and participate in a resolution session and mediation.

In issues 1(a) and 2(a) Student contends that District failed to appropriately assess him in all areas of suspected disability during both school years. Student lists the areas in which he contends District did not appropriately assess him. However, Student fails to state whether District totally failed to assess in specific areas, or whether assessments District did

conduct were deficient. If the latter, Student has failed to state why each of District's assessments was not appropriate or otherwise was deficient. For this reason issues 1(a) and 2(a) are insufficient as pled.

In issues 1(b) and 2(b) Student contends that District's assessments and individualized education programs during the two school years failed to properly identify and address his full range of needs. Although Student identifies a long list of needs he alleges District did not properly address, Student provides no facts in support of his contentions. He fails to state which of District's assessments were deficient, and why each was deficient. He fails to state which IEP was deficient and why the placement, services, and/or accommodations failed to address his needs. For these reasons, issues 1(b) and (2) are insufficiently pled.

In issues 1(c) and 2(c) Student contends that for the two school years in question, District failed to offer IEPs that contained appropriate statements of present levels of performance, measurable annual goals, and accommodations that met Student's needs. Student lists the goals he believes he needed and which District allegedly failed to develop. He also contends that the goals District did develop were not measurable. Issues 1(c) and 2(c) are therefore minimally sufficient as they relates to goals.

However, Student fails to state any facts as to why the present levels of performance in his IEPs developed during the two school years in question were improper or why the statement of present levels failed to encompass how Student was functioning at the time. Additionally, although Student contends that District failed to offer him appropriate accommodations, Student fails to state what accommodations he required to receive a FAPE that District failed to offer. Nor does Student provide any supporting facts related to his need for accommodations. For these reasons, Student's issues 1(c) and 2(c) are insufficient as pled with regard to alleged deficiencies in the statement of present levels of performance in Student's IEPs and as to any deficiencies in accommodations.

In issues 1(d) and 2(d), Student contends that he required placement at a specialized school and certain levels of related services, which Student alleges that District failed to offer. Student lists the related services and the amount of time he believes he required for each service to receive a FAPE. In issues 1(e) and 2(e) Student contends that District procedurally denied him a FAPE. Student specifically identifies the areas of alleged procedural violation as District's failure to properly and timely assess Student, District's failure to permit Parents to meaningfully participate at Student's IEP meetings, District's predetermination of Student's placement, and District's failure to file a complaint for due process in connection with District's IEP offer of May 8, 2017. Each of these issues contains sufficient information and facts to put District on notice of the issues forming the basis of the complaint.

District also contends that Student's complaint is insufficient based on the remedies requested. District contends that because Student's complaint is insufficient, there is not enough nexus to the proposed resolutions. However, a complaint is only 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).) Student has defined specific remedies he wishes ordered should he prevail on some or all of his issues. It will be Student's burden at hearing to prove the extent of remedies that should be ordered if he does prevail at hearing. For purposes of addressing the sufficiency of his complaint, Student's proposed remedies meet all statutory requirements.

ORDER

1. Issues 1(d) and (e), 2(d) and (e) and that portion of Issues 1(c) and 2(c) alleging deficiencies in Student's IEP goals, of Student's complaint are sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).

2. Issues 1(a) and (b), 2(a) and (b), and the portions of Issues 1(c) and 2(c) alleging deficiencies in the statement of present levels of performance and deficiencies in accommodations, in 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(d), 1(e), 2(d), 2(e), and the portions of Issues 1(c) and 2(c) that allege deficiencies in Student's IEP goals, in Student's complaint.

DATE: March 21, 2018

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.