BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. HANFORD JOINT UNION HIGH SCHOOL DISTRICT.	OAH Case No. 2017061067 ORDER DETERMINING COMPLAINT SUFFICIENT

On June 20, 2017 Parent on Student's behalf filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming Hanford Joint Union High School District. On July 3, 2017, District filed a response to the complaint. On July 6, 2017, District timely filed a Notice of Insufficiency 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, *supra*, at p. 34.) The pleading requirements should be liberally construed in light of the

[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).

broad remedial purposes of the Individuals with Disabilities Education Act 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 alleges the following facts. He was diagnosed with attention deficit hyperactivity disorder when he was in sixth grade. In ninth grade he was diagnosed with depression. He transferred to District's Sierra Pacific High School at the end of ninth grade. During and after 10th grade, Student had difficulty finishing homework and had average grades in most classes but failed English. In the fall of Student's junior year, the 2016-2017 school year, Parents became concerned that his grades were getting worse, he could not complete written work, his handwriting was illegible, and they suspected he may have a learning disability. Parents sent a letter to Sierra Pacific requesting that District put Student on a Section 504 Plan under Section 504 of the Rehabilitation Act of 1973, and assess Student for a learning disability. District did not send prior written notice to Parents; instead District verbally informed Parents at a meeting on January 12, 2017, that District disagreed that Student needed a Section 504 plan or that he had a learning disability. Student continued to struggle through the end of eleventh grade, receiving three D's and an F as final grades. He was expelled from the program at Sierra Pacific and was required to return to Hanford West High School for his senior year.

Student alleges District denied him a free appropriate public education as a result of the above-referenced facts. Student's complaint also identifies proposed resolutions including requesting an individualized education program, accommodations for assignments and testing, and a request for a full assessment for eligibility for special education.

District argues in its NOI that Student's complaint raises issues arising under Section 504 that are not within OAH jurisdiction. District's argument regarding jurisdiction is more appropriately addressed in a motion to dismiss. District also argues Student's complaint fails to state sufficient facts to put it on notice of claims under the IDEA, which is not persuasive.

The purpose of a notice of sufficiency is to ensure the complaint identifies a problem, provides facts supporting the problem, and includes a proposed resolution. Here, Student's complaint alleges the following issues:

1. Did District deny Student a FAPE by failing to assess Student to determine whether he was eligible for special education supports and services under the IDEA?

2. Did District procedurally violate the IDEA and deprive Parents of the opportunity to participate in the development of Student's educational program by failing to provide prior written notice to Parents that it was declining Parents' November 8, 2016 written request for an assessment for eligibility for special education services and supports?

3. Did District deny Student a FAPE by failing to offer him an individualized education program with appropriate supports and services to address his unique needs?

The facts alleged in Student's complaint are sufficient to put District on notice of each the above three issues which form the basis of the complaint. District responded to the facts in the complaint and offered a resolution session in its July 3, 2017 letter to Parents. The complaint identifies adequate related facts about each of the above-referenced problems to enable District to participate in a resolution session, mediation.

The matter shall proceed based on the issues defined in this Order unless Student chooses to amend his complaint. District may make a motion to dismiss claims arising outside of OAH jurisdiction.

A parent who is not represented by an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. (Ed. Code, § 56505.) Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

ORDER

1. The complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii) based upon the issues as defined in this Order.

2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

DATE: July 11, 2017

DocuSigned by:
Adrienne L. Krikorian
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ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings