BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. TEMECULA VALLEY UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013070001 ORDER PARTIALLY GRANTING NOTICE OF INSUFFICIENCY

On June 25, 2013, Student's counsel filed a due process hearing request (complaint) on Student's behalf naming Temecula Valley Unified School District (District). District's counsel timely filed a Notice of Insufficiency (NOI) on District's behalf on July 1, 2013. For the reasons discussed below, District NOI is partially granted as to Student's Issue 4.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint. 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. 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.

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint." 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. Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.

DISCUSSION

Student's complaint alleges the following facts. Student lives with his parents in Temecula, California and currently attends Vintage Hills Elementary School in Temecula. In October 2011, District agreed to implement certain accommodations relating to his vision. On November 9, 2011, an SST meeting was held; Student's optometrist attended and made certain recommendations for accommodations and supports, and Parents signed a vision assessment plan. Student transferred to California Virtual Academy (CAVA) in December 2011. The Riverside County Office of Education (RCOE) completed the vision assessment December 8, 2011. CAVA completed a 504 plan on April 26, 2012. Student transferred to Sycamore Academy in Lake Elsinore in August 2012. A 504 meeting was held on December 3, 2012. District held an individualized education program (IEP) team meeting on February 6, 2013, at which time Student was found eligible for special education services under the category of visual impairment. Student started attending District's Vintage Hills Elementary School on February 7, 2013. The IEP team met again on February 25, 2013. The IEP's from those meetings included supports, accommodations and assistive technology which Student alleges District did not provide or implement consistently, thereby negatively impacting Student's ability to access his education and participate in school activities. Student's complaint includes proposed resolutions, including compensatory education, an assistive technology assessment, monetary reimbursement for materials and tutoring, and staff training.

Student's complaint articulates the following issues for hearing: Did District deny Student FAPE by:

1) failing to implement Student's IEP;
2) failing to provide a vision assessment;
3) failing to provide an assistive technology assessment;
4) changing Student's placement without prior written notice;
5) and failing to provide an appropriate level of services.

In Issue 1, Student has alleged facts that support his claim that District failed to implement the February 6, 2013 and February 25, 2013 IEPs. Accordingly, Issue 1 sufficiently identifies the issue and related facts about the problem to permit District to prepare for and participate in a resolution session and mediation.

In Issues 2 and 3, Student contends that District failed to provide a vision assessment and an assistive technology assessment. Issues 2 and 3, when read in the context of the entire complaint and the chronological history alleged, are sufficient to provide District with the required notice of a description of the problems and the facts relating to the problem to participate in a resolution session and mediation.

In Issue 4, Student alleges that District changed Student's placement without prior written notice. The complaint alleges no facts that support this claim, including when District allegedly changed his placement, whether Student was eligible for special education

services at the time the alleged placement was changed, where the placement was changed to, etc. Although the complaint alleges Student attended CAVA and Sycamore Academy during 2011 and 2012, no facts are alleged that tie Student's change of placement to District's actions. Accordingly, Issue 4 is insufficiently pled in that it fails to provide District with the required notice of a description of the problem and the facts relating to the problem. Student will be granted leave to amend this issue.

In Issue 5, Student alleges that District failed to provide "an appropriate level of services." The complaint sufficiently identifies facts that support a claim as to the February 6, 2013 and February 25, 2013 IEP's. As such, Student's Issue 5 is sufficiently pleaded in order to put District on notice of the claim and prepare for and participate in a resolution session and mediation. If Student intended to include a time frame prior to February 6, 2013, he may amend the complaint with sufficient facts to support his claim.

ORDER

1. Issues 1, 2, 3 and Issue 5, as limited above, of Student's complaint are sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

2. Issue 4 of Student's complaint is 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).

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 Student fails to file a timely amended complaint, the hearing shall proceed as previously scheduled only on Issues 1, 2, 3, and Issue 5 as limited above, in Student's complaint, unless otherwise ordered.

Dated: July 2, 2013

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