BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2014120419
v.	ORDER GRANTING AMENDMENT OF COMPLAINT AND DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT
SAN JACINTO UNIFIED SCHOOL DISTRICT.	

On December 4, 2014 Student filed a Due Process Hearing Request[1] (complaint) naming San Jacinto Unified School District. On December 8, 2014, District filed a notice of insufficiency. On December 10, 2014, Student filed an opposition to District's NOI and also filed an amended complaint, which OAH deems to be a motion for leave to file an amended complaint. On December 12, 2014, District filed a statement of non-opposition to Student's amended complaint, and a notice of insufficiency of the amended complaint.

APPLICABLE LAW

An amended complaint may be filed when either (a) the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or (b) the hearing officer grants permission, provided the hearing officer may grant such permission at any time more than five (5) days prior to the due process hearing. (20 U.S.C. § 1415(c)(2)(E)(i).) The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).)

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,

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[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).

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 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

Student's motion to amend is timely and is granted. The amended complaint shall be deemed filed on the date of this order. All applicable timelines shall be reset as of the date of this order. OAH will issue a scheduling order with the new dates.

District's NOI as to the original complaint is now moot due to the filing of the amended complaint. District's NOI as to the amended complaint is timely, having been filed two days after the motion to amend the complaint was filed and before the amended complaint was deemed filed.

Student's amended complaint alleges that District denied Student a FAPE by materially failing to implement Student's IEP's dated October 10, 2012, October 7, 2013,

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[3] 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

[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).

and October 1, 2014. Student alleges that District did not provide the push-in services from a credentialed special education teacher, and did not provide the accommodations and modifications, such as additional time to complete assignments, listed in the three identified IEP's. Student also alleges that in developing the three IEP's, District failed to assess Student in the area of attention, failed to develop measureable goals in that no present levels of performance were indicated for any of Student's goals, and failed to change or modify Student's goals despite her failure to make progress on any goal since October 2012. Finally, Student alleges that District's offers of placement, accommodations, and modifications were inappropriate due to District's failure to assess Student in the area of attention and failure to develop measurable goals. Student's requested remedies include independent educational evaluations in the areas of psychoeducation and occupational therapy, and tutoring.

The facts alleged in Student's complaint are sufficient to put District on notice of the issues forming the basis of the complaint. Student's complaint identifies the issues and adequate related facts about the problem to permit District to respond to the complaint and participate in a resolution session and mediation. The complaint also contains adequate proposed resolutions. Therefore, Student's amended complaint is sufficient.

District asserts in its NOI that any claims Student asserts regarding events occurring prior to December 4, 2012 are outside the statute of limitations, Student did not allege any facts permitting Student to raise claims beyond the two year statute of limitations, and that on that basis alone, Student's complaint is insufficient. The statute of limitations might be the proper subject of a motion to dismiss, and certainly may be raised at hearing. However, the statute of limitations is not properly raised in an NOI because it does not bear on whether the complaint provides enough information to provide District "an awareness and understanding of the issues forming the basis of the complaint."

ORDER

1. Student's motion to amend is granted. The amended complaint is deemed filed the date of this order, all timelines are reset, and OAH will issue a new scheduling order.

2. The amended complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

3. All mediation, prehearing conference, and hearing dates in this matter will proceed as specified in the new scheduling order based upon the filing of the amended complaint.

DATE: December 15, 2014

/s/

KARA HATFIELD
Administrative Law Judge
Office of Administrative Hearings