BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. HIGH TECH ELEMENTARY NORTH COUNTY.	OAH Case No. 2016061146 ORDER DETERMINING DUE PROCESS COMPLAINT TO BE PARTIALLY INSUFFICIENT

On June 17, 2016, Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming High Tech Elementary North County.[2] On July 1, 2016, High Tech filed a Notice of Insufficiency as to Student's complaint.[3]

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.

[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).

[2] Student's complaint named High Tech *High* North County Elementary School. Given Student's age of seven years, the inclusion of the word "High" is considered an error.

[3] High Tech's Notice of Insufficiency included a Motion to Dismiss. The Motion to Dismiss will be addressed in a separate order after allowing Student three business days from the date of filing to respond. High Tech is advised that any future motions must be filed separately.

§ 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 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

The facts alleged in Student's complaint are sufficient to put High Tech on notice of three of the four issues forming the basis of the complaint. Student's first issue, Issue A, alleges that High Tech denied him a free appropriate public education because the December 10, 2015 individualized education program does not contain goals, services, or supports designed to meet his unique needs. For instance, Student alleges that the December 2015 IEP's reduction of individual and small group instruction to 180 minutes per week failed to address his needs and resulted in an increase in problematic behaviors. Student further alleges that High Tech failed to provide him with necessary behavior intervention services. Student's Issue A is sufficiently pled.

Student's Issue B alleges that beginning with the 2015-2016 school year, High Tech failed to implement his December 2014 IEP, specifically the provision of 1,200 minutes per week of individual and small group instruction. This issue is found sufficient.

Student's Issue C alleges that High Tech committed a procedural violation which denied Student a FAPE by preventing Parents from meaningfully participating in the IEP process when it held an IEP team meeting without them on December 4, 2014. This issue is sufficiently pled.

Student's final issue, Issue D, alleges that High Tech failed to appropriately respond to Parents' request for independent educational evaluations. Student alleges that Parents disagreed with High Tech's "most recent evaluation" and requested independent educational

evaluations after Parents removed Student from school. There are no facts in the complaint identifying the evaluation or evaluations with which Parent disagreed or which type or types of independent educational evaluations Parent requested. Accordingly, this issue lacks the specificity necessary to give High Tech an awareness and understanding of this issue in order to respond to the complaint and participate in a resolution session, mediation, and due process hearing. Accordingly, Student's Issue D is found insufficient. Student will be afforded an opportunity to amend his complaint.

High Tech's claim that Student's complaint should be deemed insufficient as it fails to name the school Student is currently attending as required by 20 U.S. C. §1415(b)(7)(A)(ii)(I), is not persuasive. Student's complaint indicates that Parents enrolled Student in his school of residence. That "High Tech is left to speculate about what other local educational agency may be responsible for Student's education needs" does not render Student's complaint insufficient. Student's Issues A, B, and C are sufficient.

Student's proposed resolutions request reimbursement for a 2016 summer program and the cost of a one-to-one aide for the summer; reimbursement for weekly therapy sessions through December 2017; reimbursement for six hours per week of Applied Behavior Analysis therapy during the 2016-2017 school year; and attorney fees. A complaint is 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 met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

ORDER

1. Student's Issues A, B, and C are sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).

2. Student's Issue D 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]

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.

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

5. If Student fails to timely file an amended complaint, the hearing shall proceed as scheduled only as to Issues A, B, and C.

DATE: July 5, 2016

DocuSigned by:
Theresa Ravandi
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THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings