BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. ALAMEDA UNIFIED SCHOOL DISTRICT AND NEA COMMUNITY LEARNING CENTER CHARTER SCHOOL DISTRICT.	OAH Case No. 2017060767 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On June 16, 2017, Parents on behalf of Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming Alameda Unified School District and Nea Community Learning Center Charter School District. On June 29, 2017, Alameda timely filed a Notice of Insufficiency as to Student's complaint. Student filed an opposition on July 3, 2017.

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.)

[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).

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

Alameda contends that Student's complaint fails to provide a description of facts related to alleged failures by Alameda to timely and appropriately identify Student's disability and special education needs and to offer and provide Student with appropriate special education and related services.

Student's compliant discusses in sufficient detail findings and recommendations from a number educational assessments. A neuropsychological evaluation, a functional behavior assessment, an occupational therapy evaluation, and a central auditory processing evaluation are among the evaluations Student relies on to demonstrate Alameda's alleged failure to identify Student' special education needs and its' failure provide Student with appropriate special education and related services. For example, the neuropsychological evaluation conducted by Michelle Horton, Ph.D., determined Student to have a nonverbal learning disability and a central auditory processing disorder. Dr. Horton recommended a school environment to include, among other things, a high level of structure, predictability, and routine, as well as a low student to teacher ratio. Based on the recommendations, Parents identified Phillips Academy, a certified nonpublic school in Alameda, California as an appropriate educational placement that can best serve Student and address her unique educational needs.

The complaint contains enough facts relating to the issues of alleged failures to identify Student's disabilities and alleged failures to provide Student with appropriate special education and related services to provide Alameda and Nea with an awareness and understanding of the alleged violations. In construing the pleading requirements liberally, the complaint sufficiently identifies the issues and adequate related facts about the problem to permit Alameda to respond to the complaint and to prepare for and fully participate in mediation.

Among Student's proposed resolutions is for placement of Student at Phillips Academy and for Alameda and/or Nea to provide Student with compensatory education and reimbursement of costs associated to assessments and services. 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).) The proposed resolutions stated in Student's complaint are well-defined requests and meet the statutorily required standard of stating a resolution to the extent known and available to Student at the time.

ORDER

1. The complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).

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

DATE: July 5, 2017

DocuSigned by:
Rommel P. Cruz
ROMMEL P. CRUZ
Administrative Law Judge
Office of Administrative Hearings