BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2015100638
v.	ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT
IRVINE UNIFIED SCHOOL DISTRICT.	

On October 15, 2015, Student filed a Due Process Hearing Request[1] (complaint) naming Irvine Unified School District.

On October 24, 2015, District 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.[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, 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.[3] These requirements prevent vague and confusing complaints, and promote fairness by providing the

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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).

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

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 complain contains three issues. The first alleges a deprivation of a FAPE in the 2014-2015 school year by failing to offer student appropriate services to meet his needs, by failing to create appropriate and measurable goals in his IEP, and by "failing to have high expectations for progress." Issue two presents the same allegations applied to the 2015-2016 school year. Issue three asserts that District failed to make a timely response to Student's request for an assessment for a central auditory processing disorder.

District contends that issues one and two are insufficiently pled to allow it to prepare to respond at the mediation session or hearing. District asserts that it does not know what Student's needs are or what types of services it should have provided. District also claims that it does not know what needs required the crafting of additional goals. Finally, District states that Student did not "explain how District's alleged perspective regarding Student denied him a FAPE or resulted in lack of meaningful educational benefit."

Student's complaint sets out that he has eligibility for special education under a diagnosis of autism and a secondary eligibility of speech or language impairment. He asserts

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[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).

that District has continued to reduce services offered him. Student objects to a series of 'fade plans' being offered by District, wherein Student's Behavior Tutor service would be reduced from 1000 minutes per week in January 2014 to 300 minutes per week in February 2015. In addition, Student was not offered extended school year services. Further, Student's only goals in his 2014-2015 IEP were for independent work, social initiation, pragmatic language/social skills, and narratives.

Student has set out facts establishing that he has acquired maladaptive behaviors as a consequence of the reduction in services, such as elopement, hygiene issues, and self-injurious behavior. Despite that, he alleges, District proposed in February 2015 to end his behavior support services completely by April 2015.

In addition, Student asserts that, as recorded in the parent-funded IEE, he should have specific learning disability eligibility due to significant discrepancy between his ability and his listening comprehension and oral expression, as well as eligibility under other health impairment for Attention Deficit Hyperactivity Disorder. Parents' IEE report set out recommended goals in 13 areas.

The facts alleged in Student's complaint are sufficient to put the 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. District's objection that Student has not explained his legal theory as to how low expectations lead to a denial of FAPE is not a ground on which to attack the sufficiency of a complaint.

District has not challenged the sufficiency of the pleading of issue 3. Upon review, that issue is sufficiently pled. Student has set forth his request for a central auditory processing deficit assessment, the date upon which the request was made, and that no response has been made by District.

Therefore, Student's statement of the three claims is sufficient.

Student's proposed resolutions are that District be offered to provide him with a placement and services to meet his needs for his autism diagnosis, including his previously-supplied 1:1 aide, speech and language deficits, listening comprehension and oral expression specific learning disability, and ADHD; 2) compensatory education, a central auditory processing deficit assessment, and reimbursement to Parents for the IEE and other educational expenses and related services. A complaint is required to include proposed resolutions to the problems, to the extent known and available to the party at the time. (20 U.S.C. § 1415(b)(7)(A)(ii)(IV).) The proposed resolution stated in Student's complaint is well-defined and meets the statutorily required standard of stating a resolution to the extent known and available to him.

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: October 28, 2015

/s/

CHRIS BUTCHKO
Administrative Law Judge
Office of Administrative Hearings