BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2013080304
v.	ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT
SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT.	

On August 8, 2013, Parent on behalf of Student (Student) filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings (OAH) naming the Newport-Mesa Unified School District (District). On August 13, 2013, the District filed a Notice of Insufficiency (NOI) 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 (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]

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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).

[4] 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."[5] The pleading requirements should be liberally construed in light of the broad remedial purposes of the Individuals with Disabilities Education Act 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 complaint contains 14 issues for hearing, which allege that the District should have also qualified Student for special education services under autistic like behaviors, failed to assess Student in all areas of suspected disabilities, and made an individualized educational program (IEP) offer that did not meet his unique needs in the least restrictive environment (LRE).

As to Issues 1 and 8, the complaint sufficiently asserts that Student has deficits that should have qualified him for special education services as autistic like behaviors, and not just speech and language impairment. For Issues 2 and 9, both allege that the District's IEP was not the LRE. However, while Issue 9 sets forth sufficient contentions why the placement was not the LRE, Issue 2 contains no explanation of Student's position, and is therefor insufficient.

As to Issues 3 and 10, the complaint contains sufficient allegations why he required behavior therapy. Issues 4 and 11 contain adequate contentions why the District's speech and language offer was not adequate to meet his unique needs. Regarding Issues 5 and 12, Student alleges sufficient fact regarding the unique needs listed in each issue and that the District did not offer adequate goals regarding these unique needs.

As to Issues 6 and 13, the complaint contains sufficient allegations about Student's need for a behavior support plan and why the plan offered by the District was not adequate. In Issue 7, Student fails to allege sufficient facts because he does not identify the areas of

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[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).

suspected disability that the District failed to assess. Finally, Student alleges sufficient facts in Issue 14 that the District failed to make a sufficiently clear educational offer by not stating the amount of time he would be mainstreamed.

Thus, Student alleges sufficient facts supporting Issues 1, 3, 4, 5, 6, and 8 through 14 in his complaint to put the District on notice, but insufficient facts in Issues 2 and 7.

Student's proposed resolutions request the District reimburse Parents for educational costs, make a specific placement, and fund a behavior and speech and language program. A complaint must 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 in Student's complaint are well-defined requests that meet the statutorily required standard of stating a resolution to the extent known and available to Student at the time.

ORDER

1. Issues 1, 3, 4, 5, 6, and 8 through 14 of Student's complaint are sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).

2. Issues 2 and 7 of Student's complaint are 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).[8]

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 only on Issues 1, 3, 4, 5, 6, and 8 through 14 in Student's complaint.

Dated: August 16, 2013

/s/
PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings

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