BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
RIALTO UNIFIED SCHOOL DISTRICT,	OAH Case No. 2017050936
v.	ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT
PARENT ON BEHALF OF STUDENT.	

On May 18, 2017, Rialto Unified School District filed a due process hearing request[1] (complaint) with the Office of Administrative Hearings naming Student. On May 30, 2017, Student filed a notice of insufficiency as to Rialto's complaint.

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.)

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

[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).

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

Rialto's complaint alleges two claims, both of which are insufficient. The issues are discussed below.

Issue 1 asks that Rialto be permitted to implement an individualized education program offer made at an IEP team meeting on April 11, 2017, which calls for Student to be placed at a nonpublic school once he is released from an interim alternative educational setting. Student was allegedly placed in the alternative setting following a behavioral incident on March 2, 2017. Rialto alleges that Student caused serious injury to staff members during the incident. However, Issue 1 asks that it be permitted to place Student at the nonpublic school "if Parent requests special education . . . ." Therefore, it is unclear if Student was found eligible for special education before the March 2, 2017 incident, or at a later date. If Student is new to special education, Parent might find it difficult to explain to his attorney Student's legal status in regards to special education, and until the attorney receives complete educational records, it would be very difficult to prepare for a resolution session, mediation or hearing. Therefore, Issue 1 is insufficiently pled.

In regards to Issue 2, Rialto is asking that an educationally related mental health services assessment conducted in November 2016 be found legally compliant. However, no reason is given for this request. There is no statement as to whether the request is being made because an independent educational evaluation has been requested, and if so, when it was requested. Or is the request being made because the evaluation supports Rialto's desire to place Student at a nonpublic school? Again, if Student is new to special education, Parent will find it difficult to explain Student's current situation to newly retained legal counsel, who may not yet have complete educational records for Student. Therefore it would be very difficult to prepare for a resolution session, mediation or hearing, and thus Issue 2 is insufficiently pled.

ORDER

1. Rialto's complaint is insufficiently pled under section title 20 United States Code 1415(c)(2)(D).

2. Rialto shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).[2]

3. 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. If Rialto fails to file a timely amended complaint, the complaint will be dismissed.

5. All dates previously set in this matter are vacated.

DATE: June 2, 2017

DocuSigned by:
Rebecca Freie
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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings

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