BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017031056
v.	ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT
SAN JOSE UNIFIED SCHOOL DISTRICT.	

On March 21, 2017, Parent on behalf of Student filed a Due Process Hearing Request with the Office of Administrative Hearings, naming San Jose Unified School District. On March 31, 2017, 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. (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 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

Student's complaint alleges three sub-issues, each arising from a general claim that District denied Student a free appropriate public education during the 2014-2015 and 2016-2016 school years. District argues that sub-issues one and three are insufficiently pled.

Student states that her general claim includes, but is not limited to, the three sub-issues. Sub-issue one alleges that District denied Student a FAPE by failing to assess in her all areas of disability, "including but not limited to," assistive technology. Sub-issue three alleges that District failed to offer Student a FAPE, "including individualized science based dyslexia based programming and supports and services for reading, writing, and math." District takes issue with Student's use of "including but not limited to" in sub-issue one, and "including" in sub-issue two. District argues that language expands the allegation to unknown claims, thereby making it difficult for District to prepare for resolution, mediation, and hearing.

District is correct that it must be able to respond to each individual claim. The Ninth Circuit recently held that school districts are required to assert a response to each claim alleged by a student. (*M.C. v. Antelope Valley Unified Sch. Dist.* (9th Cir. March 27, 2017) ___ F.3d ___, 2017 WL 1131821, **5-6.) By the foregoing standard, District is entitled to know each area that Student asserts she was not appropriately assessed in, along with each specific claim that denied her a FAPE, so it can provide the detailed response required by title 20 United States Code section 1415(c)(2)(B)(i)(I).

The term "including" in sub-issue three is sufficient for District to understand the claim. However, the expansive language of "including but not limited to" in both the general claim and sub-issue one, is too vague to permit District to respond to and prepare for resolution, mediation, and due process, and avoid the possible penalties for an insufficient response set forth in *M.C. v. Antelope Valley Unified Sch. Dist.*. Therefore, Student has failed to adequately state her claims and her complaint is insufficient as to the general claim and sub-issue one.

ORDER

1. Student's general claim and sub-issue one are insufficiently pled under section title 20 United States Code 1415(c)(2)(D).

2. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).[1]

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 Student fails to file a timely amended complaint, the hearing will proceed as presently set only on sub-issues two and three in Student's complaint, unless otherwise ordered.

DATE: April 04, 2017

DocuSigned by:
Paul H. Kamoroff
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PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings

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