BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. CARLSBAD UNIFIED SCHOOL DISTRICT.	OAH Case No. 2016050271 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On June 14, 2016, Student filed an Amended Request for Due Process Hearing complaint naming Carlsbad Unified School District. On June 24, 2016, District filed a Request for Determination of Sufficiency of Issues One, Three, Four and Five of Student's Request for Due Process Complaint. On June 27, 2016, Student filed a response to District's motion.

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 FIVE claims in the complaint, some of which are sufficient and some which are insufficient. The issues are discussed below.

ISSUE ONE: District contends that Issue One in Student's initial complaint was deemed sufficient, and Student has now alleged additional information which renews District's claims of confusion and lack of clarity. Student has filed an *amended* complaint, which allows Student the latitude to add, amend or delete any or all parts of his initial complaint. Student's Issue One sufficiently states that commencing with Student's October 1, 2014 individualized education program, District failed to provide a free appropriate public education by (1) failing to provide a one-to-one aide; (2) allowing Parent to provide an outside agency one-to-one aide at his own expense; and (3) failing to provide Student appropriate speech and language services in pragmatics and interpersonal skills. Student alleges these services are necessary to assist Student in completing his school assignments and homework, and to assist Student with pragmatics and social/interpersonal skills. Student is requesting District to provide Student with (1) a part-time one-to-one aide from a non-public agency during general education and breaks; and (2) speech and language services for pragmatics for 40 hours per year. Issue One of the complaint is sufficient to put the District on notice of the facts forming the basis of the issue. Issue One 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.

ISSUE TWO: District does not challenge the facts alleged in Student's Issue Two, therefore Issue Two of the complaint is sufficient to put the District on notice of the facts forming the basis of the issue. Student's Issue Two 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.

ISSUE THREE: Issue Three references the June 13, 2016 decision in OAH Case No. 2016040803, in which OAH determined District could complete Student's triennial assessments pursuant to the March 24, 2016 assessment plan without parental consent. Student's Issue Three is unclear and appears to aver contentions regarding the June 13, 2016 decision. Student has failed to delineate which allegations apply to which specific assessment. Issue Three fails to separately identify each assessment in question, and provide

individual factual support for each assessment questioned. Further, Student requests an independent educational evaluation in occupational therapy, but it appears that consent to this independent assessment has already been granted. Issue Three is vague and confusing and therefore fails to provide District with the required notice of a description of the problem and the facts relating to the problem. Student's Issue Three is insufficient.

ISSUE FOUR: District contends Student's Issue Four is vague and unclear. Issue Four presents some factual allegations which occurred in another school district and some allegations which occurred outside the statute of limitations. Issue Four fails to state: (1) when Student began residing within District; (2) when District became obligated for providing Student with special education and related services; (3) when District denied placement in home school, and why; (4) what period of time Parents placed Student in private school; (5) specifically, when or during what event did District fail to provide Parental Safeguards; and (6) how did District deny placement in least restrictive environment. Further, Student has provided no information to explain what was wrong or inappropriate with the 2016 IEP to justify Student's request for reimbursement of educational costs. Student also requests implementation and monitoring of academic and behavioral progress in compliance with IEP in timely manner, yet Student fails to describe any event or actions to support this request. For these reasons, Issue Four is vague and confusing. Student's Issue Four is insufficient as it fails to provide District with the required notice of a description of the problem and the facts relating to the problem.

ISSUE FIVE: Student's Issue Five contends District denied Student's request for extended school year in a therapeutic setting for remediation. Student contends he requires the requested remediation as he Student missed over 30 days of school, missed over 40 class assignments, had a delay in his home/hospital transition and tutoring; and missed speech and language services and peer interaction while in home/hospital placement. As remedy, Student is requesting placement in a non-public school. District's contentions regarding Issue Five are more related to adjudication and outcome, and are not determinative of sufficiency. Issue Five of the complaint is sufficient to put the District on notice of the facts forming the basis of the issue. Issue Five 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.

ORDER

1. Issues ONE, TWO, and FIVE of Student's complaint are sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).

2. Issues THREE and FOUR 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).[1]

4. 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.

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues ONE, TWO and FIVE of Student's complaint.

6. A parent who is not represented by an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. (Ed. Code, § 56505.) Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

DATE: July 1, 2016

DocuSigned by:
Judith Pasewark
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JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings

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