BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017010426
v.	ORDER FINDING STUDENT'S COMPLAINT PARTIALLY SUFFICIENT AND PARTIALLY INSUFFICIENT
FILLMORE UNIFIED SCHOOL DISTRICT.	

On January 17, 2017, Student filed a due process hearing request[1] (complaint) with the Office of Administrative Hearings naming Fillmore Unified School District. On January 25, 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

[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

Student's complaint alleges that: (1) since January 2016, District has failed to "provide" Student with an appropriate level of speech and language therapy, occupational therapy, and physical therapy; (2) District denied Parents the opportunity to participate in Student's December 11, 2015 individualized education program team meeting; and (3) District offered Student an unsafe and inappropriate placement. Student seeks placement in general education, a one-on-one aide for inclusion support, additional related services in his IEP, and compensatory educational services.

The complaint as written, and read as a whole, is insufficiently pled in part. The first problem alleges that District "provided" an inappropriate level of services from January 2016, which could either be a contention that District failed to implement the level of services offered in the December 11, 2015 IEP, or failed to offer an appropriate level at all, which offer predates the period specified. Therefore, problem number 1 is insufficiently pled in that it fails to provide District with the required notice of a description of the problem and the facts relating to the problem.

Student's problems 2 and 3 challenge the predetermination of the IEP and the placement offered at the December 11, 2015 IEP, and sufficiently provide District with the required notice of a description of the problem and the facts relating to the problem.

ORDER

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

2. Student's complaint at problems number 2 and 3 are sufficiently 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).[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 Student fails to file a timely amended complaint, the complaint will proceed as to problems number 2 and 3only.

5. All dates currently scheduled in this matter are confirmed.

DATE: January 26, 2017

DocuSigned by:
Alexa Hohensee
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ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings

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