BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2014010660
v.	ORDER DENYING NOTICE OF INSUFFICIENCY AND DENYING MOTION TO DISMISS FOR INSUFFICENCY
LONG BEACH UNIFIED SCHOOL DISTRICT.	

On January 17, 2014, Student filed a Due Process Hearing Request[1] (complaint) naming Long Beach Unified School District (District). On January 24, 2014, District timely filed a Notice of Insufficiency (NOI) which included a "motion to dismiss" as to Student's complaint. Although District also filed a motion to dismiss within its response to the complaint filed on January 23, 2014, this Order only addresses the motion to dismiss that was included in the NOI. For the reasons discussed below, both the NOI and motion to dismiss are denied.

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

[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).

named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.[4]

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 IDEA 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 alleges he is ten years old and eligible for special education services under the eligibility category of intellectual disability; he attends a fifth grade special day moderate to severe program at Alvarado Elementary School; he has a diagnosis of Down's Syndrome; he has been making meaningful progress in school except in the areas of math and communication; District has never assessed him for speech therapy or provide related services in speech; Parents disagreed with District's October 15, 2013 IEP offer of placement at Stephens Middle School and requested instead placement at Stanford Middle School. Student identifies four proposed resolutions, including math tutoring; a language and speech assessment and one hour a week of speech therapy; and placement at Stanford Middle School in a moderate severe special day program.

The facts alleged in Student's complaint are sufficient to put District on notice of the three issues forming the basis of the complaint. Issue 1 claims District denied Student a FAPE by failing to offer Student appropriate academic support in the area of mathematics. Issue 1 is sufficiently pleaded to put District on notice of the issue, and to prepare for a

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[4] See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

[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).

resolution session, mediation and due process hearing. Student's proposed resolution to Issue 1 is also sufficient.

Issue 2 claims District failed to assess Student in all areas of suspected need, and specifically in the area of speech and language. Issue 2 states sufficient facts to put District on notice of the issue, and to prepare for a resolution session, mediation and due process hearing. Student's proposed resolution to Issue 2 is sufficient.

Issue 3 claims District denied Student a FAPE by failing to offer an appropriate placement in the October 15, 2013 IEP. Issue 3 states sufficient facts to put District on notice of the issue, and to prepare for a resolution session, mediation and due process hearing. Student's proposed resolution to Issue 3 is sufficient.

Motion to Dismiss

Regarding District's motion to dismiss filed with the NOI, District has not stated any separate factual or legal grounds for its motion. Instead, District requested dismissal of the complaint based upon its alleged insufficiency. Because this Order finds the complaint is sufficient, the motion to dismiss is denied.

ORDER

1. The complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

2. District's motion to dismiss the complaint is denied.

3. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: January 27, 2014

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings