BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017080330
v.	ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT
WESTMINSTER SCHOOL DISTRICT.	

On August 3, 2017, Student filed a Due Process Hearing Request1 (complaint) with the Office of Administrative Hearings naming Westminster Unified School District. On August 14, 2017, District filed a timely Notice of Insufficiency as to Issues 2, 3 and 4 in 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

Issues 2, 3 and 4 of Student's complaint are sufficiently pled.

Issue 2 is "Whether the District failed to provide a Free Appropriate Public Education ("FAPE") via its September 13, 2016 IEP." In the complaint's statement of facts, Student alleges that Parent told Student's individualized education program team that Student had significant academic needs that were not being addressed in his IEP, and as a result Student was suffering anxiety, sadness and depression. Parent alleges that Parent requested that District update Student's assessments, and District reassessed Student. In the specific factual support for Issue 2, Student alleges that the September 13, 2016 IEP denied Student a FAPE by failing to provide Student more intensive and focused interventions to address Student's inability to access his academic instruction, and by failing to address Student's anxiety. This is sufficient to put District on notice of the basis for Issue 2, and adequate related facts to permit District to respond to the issue and participate in a resolution session and mediation.

Issue 3 is "Whether the District failed to provide a Free Appropriate Public Education ("FAPE") via its May November 8, 2017 IEP." In the complaint's statement of facts, Student alleges that Student's IEP team met on November 8, 2016 to review District assessments of Student. These assessments allegedly found that Student scored low in the area of broad reading, had difficulty with decoding, comprehension, and reading at a level similar to his peers, and had low scores in expressive and receptive language. Student also displayed behaviors stemming from worry. Parent expressed concerns that Student might require a more intensive environment than District's proposed placement. In the specific factual support for Issue 3, Student alleges that the November 8, 2017 IEP denied Student a FAPE because District's finding and recommendations failed to address Student's needs resulting from his multiple areas of deficits, and District failed to create a program that specifically addressed Student's unique needs and the manner in which his areas of deficit impacted Student's ability to access his education. This is sufficient to put District on notice of the basis for Issue 3, and adequate related facts to permit District to respond to the issue and participate in a resolution session and mediation.

Issue 4 is "Whether the District failed to provide a Free Appropriate Public Education ("FAPE") via its May 25, 2017 IEP." In the complaint's statement of facts, Student alleges that Student's independent neuropsychological evaluator recommended at that IEP team meeting that Student receive approximately one hour of speech intervention per day, one hour per day of simultaneous multisensory instruction to remediate his delay,

one hour per day of regular language-based reading in school, and one hour per day of reading within the home. Student's independent speech and language evaluator recommended that Student receive instruction in a small class environment with few distractions, with verbal and visual cues, and that he receive four to five sessions of speech therapy per week. In the specific factual support for Issue 4, Student alleges that the May 25, 2017 IEP denied Student a FAPE by failing to provide Student the interventions recommended by the assessors. This is sufficient to put District on notice of the basis for Issue 4, and adequate related facts to permit District to respond to the issue and participate in a resolution session and mediation.

ORDER

1. Issues 2, 3, and 4 of Student's complaint are sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).

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

DATE: August 22, 2017

DocuSigned by:

ROBERT G. MARTIN
Administrative Law Judge
F77DE57DCC0E437...
Office of Administrative Hearings