BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. IRVINE UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2014010299
IRVINE UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2013060803 ORDER DENYING DISTRICT'S PARTIAL NOTICE OF INSUFFICIENCY OF STUDENT'S COMPLAINT

On January 10, 2014, Student's mother, on Student's behalf (Student), filed a Due Process Hearing Request (complaint)[1] naming Irvine Unified School District (District). On January 15, 2014, District filed a motion to dismiss issues three and four, and all claims in issue two beyond the relevant statute of limitations. The Office of Administrative hearings (OAH) granted the motion on January 21, 2014. Also on January 21, 2014, OAH granted Student's request to consolidate Student's case with a due process complaint naming Student District originally filed in June 2013. On January 23, 2014, District timely filed a "Partial" Notice of Insufficiency (NOI) as to Student's complaint, and specifically as to Issue 2. The NOI makes no mention of OAH's order granting dismissal of portions of Issue 2. Student filed an opposition to the NOI on January 28, 2014.

[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).

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 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]

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[2] 20 U.S.C. § 1415(b) & (c).

[3] 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

[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).

DISCUSSION

Student's 22-page complaint alleges: Student is seventeen years old and lives within District boundaries; at the beginning of the 2013-2014 school year Parents privately enrolled Student in The Help Group's Bridgeport School outside District's boundaries; Student is eligible for special education under the categories of autistic-like behaviors, speech and language impairment, mild intellectual disability and apraxia; Parents expressed concerns to District during the 2011-2012 and 2012-2013 school years about Student's placement and services, including the type of class, lack of services in occupational therapy, adapted physical education, physical therapy, self-help and independent living skills goals; social skills training and goals, and transition goals and services. Student claims District failed to address Parents' many concerns during these time periods. Student also alleges: Parents consented to multiple assessments in January 2013; District held an individualized education program (IEP) meeting in March 2013, at which neither parent was present; District discussed assessments with Mother at subsequent IEP meetings in April and May 2013; in May 2013 a final Triennial Assessment Report was made available to Mother through her attorney; Mother disagreed with the results of the assessments; and Mother notified District in writing that she was privately placing Student in a non-public school.

Issue 1 claims District's spring 2013 assessments were flawed; District refused to fund IEEs despite those flaws; and by failing to provide IEEs District failed to create a program that is not reasonably calculated to provide meaningful educational benefit for Student and has denied Student a FAPE. Although the complaint does not allege that Mother specifically requested an IEE for any particular area of need, Issue 1, when read together with the remaining facts in the complaint, states enough facts to state a claim and to enable District to prepare for and participate in a resolution session, mediation and due process hearing. Student's proposed resolution that District should fund IEEs in each area of suspected disability is sufficient.

Issue 2, as limited by OAH's order dismissing claims outside of the statute of limitations, asserts that District denied Student a FAPE during the relevant statutory period by failing to assess in all areas of suspected disability and by failing to provide appropriate placement and services to Student. District's assertion that Student has not specified which of Student's many IEPs during the relevant time frame are at issue, and that Student has not provided sufficient detail as to what and why Student claims each IEP was not appropriate, is not persuasive. The issue is supported by several pages of facts. When read together with the preceding general facts the claim is sufficiently pled to put District on notice of the claim and prepare for and participate in a resolution session, mediation and due process hearing. The standard for pleading does not require the level of detail District seeks. Student's proposed resolution that District fund a placement, including all appropriate related services, is sufficient.

ORDER

1. The complaint, as limited by OAH's order dismissing claims outside of the statute of limitations in Issue 2, and dismissing Issues 3 and 4, is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

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

Dated: January 28, 2014

/s/
ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings