BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2014020700
v.	ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT AND ORDER DENYING MOTION TO DISMISS ISSUE TWO AS MOOT
LODI UNIFIED SCHOOL DISTRICT.	

On February 19, 2014, Parent on behalf of Student (Student) filed a Due Process Hearing Request[1] (complaint) naming Lodi Unified School District (Lodi).

On March 4, 2014, the Office of Administrative Hearings (OAH) granted Lodi's Notice of Insufficiency (NOI) as to Issues One, Two, Three and Five, and granted Student the opportunity to file an amended complaint within 14 days. On March 14, 2014, Student timely filed his amended complaint.

On March 26, 2014, Lodi filed a second NOI as to Student's Issue Two only, in his amended complaint, as well as a Motion to Dismiss Issue Two.

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

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[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).

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 Individuals with Disabilities Education Act (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

In his amended complaint, Student lists five problems or issues, but only four of these are sufficiently pled as discussed below.

In Issue One, Student alleges that during the 2013-2014 school year, Lodi denied Student a FAPE by failing to develop a behavior support plan to address Student's disruptive behaviors on the bus and failing to allow Parent access to view videotapes of Student's behaviors on the bus, which prevented Parent from meaningfully participating in the decision making process. As a resolution, Student requests that Parent be allowed to view the bus video tapes. Issue One provides Lodi with notice of the facts forming the basis of the

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[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).

problem and provides sufficient information to enable Lodi to prepare for hearing and to participate in a resolution session and mediation. Issue One is legally sufficient.

In Issue Two, Student alleges that Lodi failed to comply with a corrective action required by the California Department of Education, namely to send a directive to all special education staff at Student's school outlining and requiring compliance with the provisions of Education Code section 56043, subdivision (i), and to provide proof of compliance. Student's proposed resolution is for Lodi to prove that it complied with the corrective action by providing the directives, the dates of the directives, and the names and job titles of the recipients.

Student's Issue Two is insufficiently pled in that it fails to provide Lodi with the required notice of a description of the nature of the problem as it relates to the proposed initiation or change concerning the identification, evaluation, or educational placement of Student, or the provision of a FAPE to Student. Issue Two does not identify any issue arising under the IDEA, and is therefore legally insufficient. Although Student will be permitted the opportunity to once again amend his complaint, Student is advised that OAH does not have jurisdiction to enforce compliance with a directive from the California Department of Education. If Student decides to amend Issue Two, Student is reminded that he must provide facts identifying how Lodi's alleged failure to comply with a corrective action, required by the California Department of Education, relates to a proposed initiation or change concerning the identification, evaluation, or educational placement of Student or how it resulted in the denial of a FAPE to Student.

Issue Three alleges that at the September 6, 2013 individual education program (IEP) team meeting, Lodi did not include language contained in the prior IEP dated April 6, 2013, that it would provide an alternate bus as soon as it was available, in the event Student was suspended from the bus. Parent contends that Student requires this related service and supplemental transportation and that Parent has not consented to any change from the April 2013 transportation service and IEP wording. Student proposes that the September 6, 2013 IEP be amended to reflect the provision of supplemental transportation in the event Student is suspended from the bus as agreed to in April 2013. Issue Three provides Lodi with notice of the facts forming the basis of the problem and sufficient information to enable Lodi to prepare for hearing and to participate in a resolution session and mediation. Issue Three is legally sufficient.

On March 4, 2014, OAH previously found Student's Issue Four to be sufficiently pled.

In Issue Five, Student alleges that Lodi has failed to provide continuous transportation for Student and instead required Parent to provide transportation which has denied Student a FAPE. As a resolution, Student proposes that Lodi ensure transportation and compensate Parent for expenses he incurred in providing this service. Issue Five provides Lodi with sufficient notice of the facts forming the basis of the problem and sufficient information to

enable Lodi to prepare for hearing and to participate in a resolution session and mediation. Issue Five is legally sufficient.

MEDIATOR ASSISTANCE FOR AN UNREPRESENTAED PARTY

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.[8] Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

ORDER

1. Student's amended Issue Two is insufficiently pled under title 20 United States Code 1415(c)(2)(D).

2. Student shall be permitted to file a second amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).[9]

3. The second amended complaint shall comply with the requirements of title 20 United States Code 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 second amended complaint, Issue Two will be dismissed and the matter shall proceed to hearing as scheduled as to Issues One, Three, Four and Five in Student's first amended complaint.

5. The District's motion to dismiss Issue Two is denied as moot.

DATE: March 26, 2014

/s/
THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings

8 Ed. Code, § 56505.

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