BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SPENCER VALLEY ELEMENTRY SCHOOL DISTRICT.	OAH CASE NO. 2014120575 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On December 05, 2014 Student filed a Due Process Hearing Request[1] (complaint) naming District.

On December 11, 2014, District filed a Notice of Insufficiency (NOI) as to issues two and three of the complaint, including the proposed resolutions for those issues. District also challenged the sufficiency of Student's home address and school of attendance.

On December 17, 2014, District filed an Amended NOI as to issues two and three of the complaint, including the proposed resolutions for those issues. District also challenged the sufficiency of Student's home address and school of attendance. The Amended NOI contained additional arguments regarding the insufficiency of the complaint.

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

[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).

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] A complaint shall also include the address of the residence of the child, and the name of the school the child is attending.[5]

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint."[6] A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (20 U.S.C. §1415(b)(7)(A)(ii)(IV).) 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.[7] Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.[8]

DISCUSSION

Student's sixteen-page complaint lists five issues for hearing accompanied by proposed resolutions. Student's preamble of facts alleges that he was born on May 22, 2002, and that he is eligible for special education under the category of intellectual disability, secondary to Down Syndrome. Student alleges that he attended the Spencer Valley Elementary School beginning in April 2013 through the 2013-2014 school year and returned for the 2014-2015 school year until September 26, 2014. Student alleges that he was placed

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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] 20 U.S.C. § 1415(b)(7)(A)(ii)(I).

[6] Sen. Rep. No. 108-185, *supra*, at p. 34.

[7] *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.].

[8] 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).

in a full-inclusion general education program with supplementary supports and services, including an aide. Student alleges that the District's behavioral program did not address Student's serious, disruptive behaviors. Student alleges that he needs a particular behavioral methodology called Relationship Development Intervention (RDI) as part of his behavioral program. Student alleges that the District's staff was not qualified and adequately trained to support Student's behavior, including being trained in RDI.

District contends that issues two and three and their proposed resolutions are insufficient. For purposes of clarity, this order will address all issues in Student's complaint.

Issues

Issue one alleges that at Student's September 25, 2014 IEP meeting the District denied the parents an opportunity to participate in the meeting, because the District failed to engage in a collaborative discussion about Student's then-current behavioral challenges, and the District failed to respond during the meeting to the parents' requests for changes to Student's program. The complaint describes Student's then-current behavioral challenges, including refusing to follow directions, making negative verbalizations toward his aide (e.g., saying "I hate you" and hissing at his aide), and hiding in, and escaping, from the classroom. The complaint also describes parents' specific requests at the September 25, 2014 IEP meeting relating to those challenges, including assigning a highly trained aide and certified behavioral consultant to implement Student's behavioral program, using RDI as a component of Student's behavioral program. The complaint also alleges that the facilitator of the September 25, 2014 IEP meeting stated the District was not prepared to respond to the parents' requests during the meeting. Issue one is sufficient to put District on notice of the issues to prepare for a resolution session, mediation and a due process hearing.

Issue two alleges that between August 18 and September 25, 2014, the placement, services, supplementary aids and supports that were actually implemented by the District's staff or contractors denied Student a FAPE in the area of behavior. Student alleges that at the beginning of the 2014-2015 school year, he was placed in a full-inclusion, multi-graded, general education program at Spencer Valley Elementary School. Student alleges that personnel, including Student's aide, were ineffective in managing his disruptive and non-compliant behaviors, including refusing to comply with directions, interacting negatively with his aide, and escaping from the classroom. Student further alleges that the District did not have adequately trained and qualified personnel to implement Student's behavioral program, including training in RDI. Student proposes that the District fully reimburse parents for the expenses associated with a private placement. Issue two is sufficient to put District on notice of the issues to prepare for a resolution session, mediation and a due process hearing. Student has also met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

Issue three alleges that as of September 25, 2014, Student needed more highly trained behavioral support staff, including a certified behavioral consultant, an aide who had received additional training by a certified behavioral consultant, and a behavioral

management program that included RDI as a necessary component, implemented with fidelity. Student alleges that he needed these components as part of his IEP as of September 25, 2014, because of the unchanged and serious behavior manifested by Student between August 18 and September 25, 2014. Student proposes that his IEP be amended to state that his behavioral support related services shall be provided by a certified behavioral consultant, that his aide shall be trained by a certified behavioral consultant, that his behavioral management program shall include RDI as a component, and that his behavioral management program shall be implemented with fidelity. Issue three is sufficient to put District on notice of the issues to prepare for a resolution session, mediation and a due process hearing. Student has also met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

Issue four alleges that the District failed to implement Student's "stay put" IEP during the 2014 Extended School Year. Student alleges that an IEP dated April 11, 2011, was the operative IEP for ESY 2014, which offered 100 hours of individual specialized academic instruction, 2 hours a week of speech and language services, 120 minutes a week of Adapted Physical Education and 120 minutes a week of behavior intervention services. Student alleges that the District failed to implement the IEP by assigning an unlicensed, uncertified, and non-credentialed instructional assistant who had never been trained in RDI; by using an unqualified instructional assistant to provide the behavior intervention services; by not implementing separate behavior intervention services; by not offering a non-public agency or any certified behavioral consultant; and by not providing all of the speech and language and Adapted Physical Education services offered by the IEP. Student seeks compensatory education to make-up for the District's failure to provide him with an appropriate stay-put placement during ESY 2014. Issue four is sufficient to put District on notice of the issues to prepare for a resolution session, mediation and a due process hearing. Student has also met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

Issue five alleges that District by its actions as alleged in the complaint violated Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) (Section 504), the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.)(ADA), and the California Unruh Civil Rights Act (Cal. Div. Code, §§ 51, 52). Issue five states no facts or claims relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a FAPE to Student under the IDEA. As Student recognizes in his complaint, OAH has no jurisdiction to entertain claims arising under Section 504, the ADA or the Unruh Act. Accordingly, any such claims, even if sufficiently alleged, may be subject to a motion to dismiss.

Student's Address of Residence

District argues that the complaint is insufficient because it does not provide Student's current residential address. Student alleges an address in complaint, which is sufficient for

purposes of Section 1415(b)(7)(A)(ii)(I). A factual dispute regarding Student's current residential address extends beyond the analysis of the sufficiency of Student's complaint.

Student's School of Attendance

District argues that the complaint is insufficient because it does not provide Student's current school of attendance. Student alleges that his school of attendance is Spencer Valley Elementary School, which is sufficient for purposes of Section 1415(b)(7)(A)(ii)(I). A factual dispute regarding Student's current school of attendance extends beyond the analysis of the sufficiency of Student's complaint.

ORDER

1. Student's complaint 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.

DATE: December 19, 2014

/s/

CAROLINE A. ZUK
Administrative Law Judge
Office of Administrative Hearings