BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2016080512
v.	ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT
BYRON UNION SCHOOL DISTRICT.	

On September 6, 2016, Student filed a First Amended Request for Mediation and Due Process Hearing[1] (complaint) with the Office of Administrative Hearings naming Byron Union School District and Liberty Union High School District. On September 21, 2016, Byron filed a Notice of Insufficiency as to 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

[1] A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 U.S.C. section 1415(b)(7)(A).

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

Student's complaint alleges 13 claims in the complaint. District contends Issues 1, 5, 10, and 13 are insufficiently pled.

As to Issue 1, Student alleges that Byron denied Student a free appropriate public education when it failed to provide Student's educational records within five days of a request and because that failure delayed Student's filing a due process complaint. Student's complaint sufficiently alleges when the request for records was made, when Byron responded, and delineated the types of documents Student believes were left out of the production of educational records, in paragraphs 29 and 39 through 53. However, Student has not linked up missing documents to time periods those documents cover, for example test protocols from the 2014 – 2015 school year, or correspondence from Parent to District in the fall of 2014. Student's educational history began in the 2005 – 2006 school year. Byron is left in the dark as to which types of documents are said to be missing from which school years and would have to guess at which witnesses would be able to testify about any such documents. Finally, Student's complaint fails to make a causal connection between any missing document and her delay in filing a complaint in this matter. No allegations support this second part of Issue 1. Student should provide a clear explanation of how specific missing documents led to the late filing of a complaint and how that denied Student a FAPE. Issue 1 is insufficiently pled.

In Issue 5, Student alleges Byron denied her a FAPE in several identified school years as it used the Woodcock Johnson Achievement Test III, which Student claims is an invalid testing instrument for a student with specific learning disability. Byron argues that each test must be identified by date, to make this averment sufficient. However, identifying the school years in which the tests were used is sufficient to put Byron on notice of the issue and the facts relating to the issue to permit Byron to respond to the complaint and participate in resolution, mediation, and hearing. Nonetheless, when Student drafts her second amended complaint, she will have the opportunity to add the date of specific tests, or reports of testing, which she alleges were invalid.

As to Issue 10, Student alleges Byron denied her a FAPE in several identified school years when it failed to provide appropriate programs, services, supports, and specific interventions to address bullying at school. Student fails to plead any facts identifying the dates of any specific IEP's at issue. Though Student describes some specific incidents of bullying in paragraph 35 of her complaint, she fails to identify dates or time periods for each of the examples. Further Student fails to allege facts connecting any of the alleged incidents to a denial of FAPE. In her second amended complaint, Student should identify incidents of bullying by date and description and allege how those incidents resulted in the denial of a FAPE. Issue 10 is insufficiently pled.

As to Issue 13, Student alleges the "Respondents" denied Student a FAPE by failing to make a formal, specific, written offer of FAPE, which identified the placement and services and the start date, frequency, location, and duration of the program. Student fails to allege which district is responsible for the denial of FAPE in any particular IEP. For instance, Student refers to a "school tour/IEP meeting" and an offer of special education for 662 minutes per week, in paragraphs 27 and 171. Paragraph 27 alleges that Liberty Union High School District offered 662 minutes of special education supports, and seems to link that to an IEP that occurred on February 24, 2016. However, Student was attending a school in Byron in February 2016. The complaint mentions several IEP's that were held during the 2015 – 2016 school year, prior to Student's transition to high school. However, Student fails to identify which of the IEP's address her transition, which of the IEP's, or parts thereof, failed to offer a FAPE, and which of the districts were responsible for each. Issue 13 does not provide Byron with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.

ORDER

1. Issue 5 of Student's complaint is sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).

2. Issues 1, 10, and 13 of Student's complaint are insufficiently pled under title 20 United States Code section 1415(c)(2)(D).

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

4. The amended complaint shall comply with the requirements of title 20 U.S.C. section 1415(b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.

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

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues 2 through 9, and 11 through 12, in Student's complaint.

DATE: September 26, 2016

DocuSigned by:
Cole Dalton
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COLE DALTON
Administrative Law Judge
Office of Administrative Hearings