BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2013070920
v.	ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT
DOWNEY UNIFIED SCHOOL DISTRICT.	

On July 18, 2013, Student's parent on behalf of Student (Student) filed a due process hearing request[1] (complaint) naming the Downey Unified School District (District). On August 6, 2013, the Office of Administrative Hearings (OAH) issued an order finding the complaint to be insufficient and giving Student leave to amend the complaint.

On August 20, 2013, Student filed an amended due process hearing request (amended complaint).

On August 30, 2013, the District filed a notice of insufficiency (NOI) as to Student's amended 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]

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]

DISCUSSION

Student alleges four issues in the amended complaint. In Student's original complaint, issue one was confusing because it was difficult to tell if Student was alleging that the District failed to find Student eligible for special education or whether Student was alleging that the District failed to assess in all area of suspected disability.

Although Student's amended complaint is still confusing and poorly worded, Student has clarified that Student's allegation involves the District's failure to identify Student's behavioral, social-emotional, and mental health needs. Issue one is sufficient.

Issue two is also a bit confusing because it seems to allege two unrelated issues. It alleges that the District failed to hold a timely individualized education program (IEP) meeting after a parent request. However, it also alleges that the District failed to timely complete an assessment and hold an IEP meeting after Student's parent signed 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).

assessment plan on December 18, 2012. It is not clear whether these two issues are related or just placed together because they involve procedural violations. However, despite that confusion, the facts are sufficiently pled for the District to understand the two issues and respond to them.

The third issue alleges that the District failed to provide translation services for Student's parents for all of Student's IEP meetings from 2008 to the present and thereby prevented Student's parents from meaningfully participating in the IEP process. Student also alleges that there is an exception to the two year statute of limitations under these facts.

The District contends that the amended complaint is not clear as to whether the issue involves failure to have a translator at the IEP meetings or involves a failure to translate IEP documents. However, despite the District's claims, Student appears to be alleging that the District did not supply translators at any of the IEP meetings. Student alleges five specific IEP's that were not translated. While the issue could be stated more clearly, it is sufficiently pled.

The fourth issue in the amended complaint is new. It alleges that the District failed to provide Student with accurate present levels of performance and goals in Student's May 2011 and May 2012 IEPs. The issue is sufficiently pled.

ORDER

1. The amended 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.

Dated: September 3, 2013

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings