BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Matter of:<br><br>PARENT ON BEHALF OF STUDENT,<br><br>v.<br><br>BORREGO SPRINGS UNIFIED SCHOOL DISTRICT. | OAH Case No. 2016010468<br><br>ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT |

On January 19, 2016, Student filed a due process hearing request[1] (complaint) with the Office of Administrative Hearings naming Borrego Springs Unified School District as respondent. On February 3, 2016, Borrego Springs Unified School District 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,

[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).

*supra*, at p. 34.) 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. (*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

Borrego Springs generally contends the complaint is insufficient because Student fails to describe facts as to when or how Borrego Springs denied Student a free and appropriate education in the least restrictive environment, and what remedy, if any, can make Student whole. Contrary to Borrego Springs' contentions, Student has alleged sufficient facts to provide Borrego Springs with an awareness and understanding of the issues and proposed resolution forming the basis of the complaint.

In Student's first issue, Student claims he was denied a FAPE during the 2013-2014 and 2014-2015 school years when Borrego Springs failed to appropriately assess Student in all areas of suspected disability. The complaint provides a description and sufficient facts relating to Student's claims relating to this issue. For example, for the 2013-2014 school year, Student alleges, in April 2014, Parent expressed concerns to the IEP team about Student's handwriting and occupational therapy support. Student alleges the IEP team recommended Student's OT services be terminated and replaced with a general OT consult, and that the IEP team's decision occurred without first conducting an OT assessment of Student. For the 2014-2015 school year, Student alleges he participated in a psychological assessment administered by Dr. Jill Weckerly, who recommended Student receive a neurological assessment. The facts contained in the complaint do not indicate a neurological assessment was conducted during the 2014-2015 school year by Borrego Springs. Student also alleges concerns about the validity of Borrego Springs' speech and language assessment of Student and the assessor's conclusions about the OT assessment, both conducted in April 2015. These facts, among others contained in the complaint, provide a description of the issue and sufficient related facts to provide Borrego Springs with an awareness and understanding of the issues forming the basis of this claim.

In Student's second issue, Student claims he was denied a FAPE during the 2013-2014 and 2014-2015 school years when Borrego Springs failed to develop and implement Student's IEP to provide him with the necessary programming, services, and/or supports to enable him to access his educational curriculum and obtain some educational benefit. Student has sufficiently pled facts in support of this claim. For example, as discussed above,

in the complaint, Student alleges during the 2013-2014 school year, Parent expressed concerns about Student's OT support. Student further alleges the IEP team terminated Student's OT services and replaced those services with a general OT consult. In addition, Student alleges in the complaint that in July 2014, Borrego Springs did not take any action to address Student's regression in reading. Student also alleges facts relating to Student's receipt of individual speech and language services on a computer in the back of a general education classroom in April 2015, despite Student's ongoing attentional issues and the trouble Student and Student's "SPL" service provider had understanding one another during Student's individual speech and language sessions. These facts, among others contained in the complaint, provide a description of the issue and sufficient related facts to provide Borrego Springs with an awareness and understanding of the issues forming the basis of this claim.

In Student's third issue, Student claims he was denied a FAPE by Borrego Springs during the 2013-2014 and 2014-2015 school year when Borrego Springs failed to provide an appropriate placement for Student in the least restrictive environment. Student has sufficiently pled facts in support of this claim. For example, Student alleges Parent expressed concerns at an April 2014 IEP meeting about whether Student was making progress on his IEP goals and questioned his preparedness to transition to high school. The complaint further alleges Student regressed in his reading level according to a report received by Parent from the District in July 2014. There are sufficient facts alleged in the complaint to put Borrego Springs on notice that Student's placement during the relevant period may not have been appropriate. It is not necessary for Student to articulate in his complaint exactly what placement he required during the relevant period for this claim to be sufficiently pled. Student will need to present evidence at hearing to prove all his claims, but at this stage of the proceeding, the facts alleged are sufficient to put Borrego Springs on notice of the issues forming the basis of this claim.

Student's seeks compensatory education to address his claims of a FAPE denial. 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 complaint alleges sufficient facts to put Borrego Springs on notice of the resolution Student is seeking to remedy the claims alleged in the complaint. Student has met the statutorily required standard of stating a resolution to the extent known and available to him at this time. Contrary to the contentions made by Borrego Springs, Student is not required to set forth in the complaint the amount and type of compensatory education he intends to seek at hearing. Of course, Student and Borrego Springs are not precluded from clarifying Student's proposed resolution during mediation or as the matter proceeds to hearing.

Accordingly, the facts alleged in the complaint and proposed resolution are sufficient to put Borrego Springs on notice of the issues forming the basis of the complaint. The complaint identifies the issues and provides adequate related facts about Student's claims to permit Borrego Springs to respond to the complaint and participate in a resolution session and mediation. Therefore, Student's statement of the three claims contained in the complaint is sufficient. Although the claims raised in the complaint are deemed sufficient, nothing

precludes the Administrative Law Judge from further refining the issues in consultation with the parties prior to hearing.

ORDER

1. The 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: February 4, 2016

**/s/**

DENA COGGINS
Administrative Law Judge
Office of Administrative Hearings