BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2015050342
v.	ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT
GARVEY SCHOOL DISTRICT.	

On April 27, 2015, Student filed a Complaint for Due Process[1] naming Garvey School District.

On May 8, 2015, District filed a Notice of Insufficiency as to Student's complaint, Issues Three and Eight, seeking dismissal of the complaint. The OAH did not receive a response to the NOI.

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 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

[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).

[3] 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

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

District contends that Issues Three and Eight fail to specify, "what type of special education, as opposed to related services, [Student] required," in his February 3, 2014 individualized education program.

In Issue Three of his complaint, under the subheading "***Special education instruction and supports,"*** Student alleges the February 3, 2014 IEP fails to identify the purpose, frequency, location and duration of "consultation services" specified in the IEP. Issue Three provides extensive background allegations regarding Student's needs in the areas of behavior (including social-emotional) and communication that impede his ability to learn in the general education environment. Student alleges he did not receive any special education instructional supports in his general education placement to address these needs. Rather, he received speech and language and counseling as direct services outside of the general education setting. He alleges nothing in the IEP shows, "that the counselor or speech and language pathologist worked with the general education teacher or any other staff that comes into contact with [Student]."

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[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).

Thus, Student sufficiently puts District on notice of the issue and to prepare for and participate in a resolution session, mediation and due process hearing.

In Issue Eight, Student alleges that District "wanted to remove [Student] from special education," and did not offer, "ANY behavior services, counseling, assistive technology, goals or any special education services to support [Student] in the general education program," with regard to the October 29, 2014 IEP. Student's complaint alleges his ongoing needs in these areas and the proposed resolutions offer a specific outline of recommended placement and services sufficient to put District on notice of the issue and to prepare for and participate in a resolution session, mediation and due process hearing.

District also contends that Issues Three and Eight allege the, "IEP team should have considered [Student's] need for assistive technology but asserts absolutely no facts in support of the allegation." Student's complaint sufficiently alleges the issue of whether District denied Student a FAPE by failing to offer or review the need for assistive technology at the IEPs of February 3, 2014 and October 29, 2014.

The facts alleged in Student's complaint are sufficient to put the District on notice of the issues forming the basis of the complaint. Student's complaint identifies the issues and adequate related facts about the problem to permit District to respond to the complaint and participate in a resolution session and mediation.

Therefore, Student's statement of the eight claims is sufficient.

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: May 13, 2015

/s/

COLE DALTON
Administrative Law Judge
Office of Administrative Hearings