BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2015100421
v.	ORDER GRANTING NOTICE OF INSUFFICIENCY WITH FOURTEEN DAYS LEAVE TO AMEND
PARLIER UNIFIED SCHOOL DISTRICT.	

On October 07, 2015 Parent on Student's behalf (Student) filed a Due Process Hearing Request[1] (complaint) naming Parlier Unified School District (District). On October 20, 2015, District timely filed a Notice of Insufficiency (NOI) as to Student's complaint. For the reasons discussed below, the complaint is deemed insufficient and Student is granted leave to amend.

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 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]

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[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).

[4] 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."[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]

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).)

DISCUSSION

Student's complaint alleges three issues which fall within the jurisdiction of the Office of Administrative Hearings. Student contends that District denied Student a FAPE by: 1) using educational strategies that were not in Student's individualized education plan; 2) denying Parent the right to enter onto school premises on October 2, 2015, thereby depriving Parent of the opportunity to participate in the development of Student's educational program, and 3) failing to appropriately implement Student's behavior support plan.

As to the first issue, Student has not alleged sufficient facts to put District on notice of the claim. Specifically, Student has not identified what strategies were called for in the IEP that District failed to implement, what strategies were used that Parent contends were not consented to by Parent, and what, if any, harm Student suffered as a result. For that reason, Issue One, as defined above, is insufficient. Student will be granted leave to amend the complaint to address the deficiencies.

In Issue Two, Student has failed to specify any facts relating to the October 2, 2015 incident, specifically for what purpose Parent attempted to enter the school and how District's denial of entry denied Parent the opportunity to participate in the IEP process. The complaint

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[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).

does not state sufficient facts to put District on notice of the claim and is therefore insufficient. Student will be granted leave to amend to address the deficiencies.

In Issue Three, Student contends that District failed to appropriately implement his behavior support plan by not properly implementing the check-in/check out process, by inspecting his personal belongings, and by offering a reward and punishment ideology for behaviors that was not part of his behavior support plan. Student has identified sufficient facts to put District on notice of this claim in order to prepare for a resolution session and mediation. Issue Three is sufficient.

However, Parent's only proposed resolution is a request for a meeting to discuss and resolve the issues. The proposed resolution stated in Student's complaint is not well defined in connection with Issues One, Two and Three particularly because the due process procedures provide for both a resolution session unless waived in writing by both parties, and mediation, which is voluntary. As such Student has not met the statutorily required standard of stating a proposed resolution to the issues to the extent known and available to him at the time, and as a result the entire complaint is insufficient.

A parent who is not represented by an attorney may request that the Office of Administrative Hearings provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint [8] Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

ORDER

1. Student's Issues One and Two of the complaint are insufficiently pled under section title 20 United States Code 1415(c)(2)(D). Issue Three is sufficiently pled but is not supported by proposed resolutions relating to the claim. Therefore, the complaint is insufficient in its entirety.

2. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).[9]

3. The amended complaint shall comply with the requirements of title 20 United States Code section 1415(b)(7)(A)(ii), and shall be filed with the Office of Administrative Hearings and served on District not later than 14 calendar days from the date of this order.

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8 Ed. Code, § 56505.

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

4. If Student fails to file a timely amended complaint, the complaint will be dismissed.

5. All dates previously set in this matter are vacated.

DATE: October 22, 2015

/S/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings