BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LANCASTER SCHOOL DISTRICT AND WESTSIDE UNION SCHOOL DISTRICT.	OAH CASE NO. 2013080208 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On August 6, 2013 Parent on behalf of Student (Student) filed with the Office of Administrative Hearings (OAH) a Due Process Hearing Request[1] naming the Lancaster School District (LSD) and the Westside Union School District (Westside) as respondents. On August 23, 2013, Student requested leave to file an amended complaint prior to either of the respondents filing any responsive pleadings. OAH granted Student's request, and the amended complaint was deemed filed on August 30, 2013.

On September 9, 2013, Westside filed a Notice of Insufficiency (NOI) 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.[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's amended complaint alleges three claims, two are sufficient and one is insufficient. Student alleges that she is four years old and deaf. Student also contends that she resides within the geographical boundaries of Westside. The amended complaint states that Westside and LSD have entered into a series of agreements and understandings where LSD provides services for Westside students until they reach the age of three.

Issue One

In Issue One, Student alleges that she has been denied a free appropriate public education by the respondents in that the respondents failed to produce all such records to Student's parent (Parent). Student contends that LSD failed to produce communications

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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).

between LSD and Westside and documents regarding payment and reimbursement which the respondents were responsible.

Westside contends that it never received any records request from Student. Westside contends that Issue One is not sufficient as Student fails to allege facts demonstrating when or how Student requested the records and how the failure to provide such records amounts to a denial of a free appropriate public education (FAPE).

Issue One is not sufficiently pled as to Westside as it fails to contain any factual support relating to any acts or omissions allegedly done by Westside. Also, Student fails to set forth when and how such a demand for educational records was made.

Issue Two

In Issue Two, Student alleges that the respondents failed to fund Auditory Verbal Therapy services (AVT) as called for in Student's Individualized Family Service Plan (IFSP) resulting from IFSP meetings held on June 9, 2011; December 15, 2011; and January 12, 2012. Student alleges that the respondents have failed to reimburse for any AVP for the past two years as called for in Student's IFSP.

Westside contends that Issue Two is not sufficient as Student fails to "specify which alleged acts or omissions are attributable to the alleged violations regarding the IFSPs," and what dates either or both of the respondents failed to make reimbursement to Parent.[8]

Issue Two is sufficiently pled to put Westside on notice as to Student's claim. Student's claim is that for two years, respondents, including Westside (Student's district of residency), failed to reimburse Student for AVT as required by the IFSP. Westside has sufficient information to prepare for hearing and participate in both a resolution session and mediation.

Issue Three

In Issue Three, Student alleges that Westside deprived Student of a FAPE by failing to assess Student for special education and related services when it had notice that Student was a child who may be eligible for special education in that Westside had previously provided Student with a IFSP.

Westside contends that Issue Three is not sufficient in that Student fails to identify when it should have identified Student who might need special education and related services. Westside also contends that Student failed to allege facts that alleging Student's alleged disability.

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[8] Westside has also filed a motion to dismiss Issue Two as not being with the jurisdiction of OAH. That motion is pending.

Issue Three is sufficiently pled as it puts Westside on notice as to Student's claim. The complaint must be read in its entirety when considering whether a specific issue is sufficient. Here, Student alleges she is deaf and has been receiving services under an IFSP through Westside. Student further alleges that upon turning three years, Westside should have assessed Student to determine whether she was eligible for special education and related services since Westside knew that Student may be eligible for special education based on the IFSP. Westside has sufficient information to prepare for hearing and participate in a resolution session and mediation.

ORDER

1. Issues Two and Three of Student's amended complaint are sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

2. Issue One of Student's amended complaint is insufficiently pled under Title 20 United States Code section 1415(c)(2)(D).

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

4. The second amended complaint shall comply with the requirements of Title 20 United States Code section 1415 (b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.

5. If Student fails to file a timely second amended complaint, the hearing shall proceed only on Issues Two and Three in Student's complaint.

Dated: September 10, 2013

/s/
ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings

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