BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. OCEAN VIEW ELEMENTARY SCHOOL DISTRICT.	OAH CASE NO. 2011110468 ORDER PARTIALLY GRANTING NOTICE OF INSUFFICIENCY OF COMPLAINT

On November 14, 2011[1], Student filed a Due Process Hearing Request[2] (complaint) naming District. On November 28, 2011, District timely filed a Notice of Insufficiency (NOI) as to Student's issues one and four. For the reasons discussed below, the NOI is partially granted.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.[3] 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

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[1] OAH closes at 5:00 p.m. and documents faxed to OAH after that time are considered to be filed the next business day. The facsimile identifier at the top of Student's complaint indicates that the complaint was faxed to OAH beginning at 5:00 p.m. and completed after the close of business at 5:02 p.m. on Thursday, November 10, 2011. On Friday, November 11, 2011, OAH was closed for a State holiday. Therefore, the complaint was not filed with OAH until November 14, 2011. Thus, District's NOI was timely filed on November 28, 2011.

[2] 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).

[3] 20 U.S.C. § 1415(b) & (c).

resolution of the problem to the extent known and available to the party at the time.[4] 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.[5]

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint."[6] 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.[7] Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.[8]

DISCUSSION

Student's complaint alleges four issues and proposed resolutions.

Issue one alleges that District procedurally violated the Individuals with Disabilities Education Act (IDEA) by failing to provide Student's parents with a full copy of educational records. In particular, Student alleges that Student's records do not include documents relating to a March 2008 settlement agreement executed by Parents relating to Student. The complaint does not state any facts that allege when Parents requested the records, when the allegedly incomplete records were provided to Parents, or how the District's alleged failure to provide documents relating to a March 2008 settlement agreement denied Student a FAPE or significantly impeded his parents' right to meaningfully participate in the development of Student's educational program. Therefore, issue one is insufficiently pleaded. Student will be granted leave to amend issue one.

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[4] 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

[5] See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

[6] Sen. Rep. No. 108-185, *supra*, at p. 34.

[7] *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.].

[8] 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).

Issue two alleges that District denied Student a FAPE by failing to appropriately assess in all areas of suspected disabilities, including oral motor, sensory integration, oral sensory, augmentative communication and social emotional function. Issue two is sufficiently pleaded to put District on notice of the issue and to prepare for a resolution session, mediation and hearing.

Issue three alleges that District denied Student a FAPE by failing to offer a comprehensive and appropriate individualized educational program (IEP) to address all of Student's unique needs in its March 22, 2011 IEP. Issue three when read in conjunction with the general allegations of fact is sufficiently pleaded to put District on notice of the issue to prepare for a resolution session, mediation and hearing.

Issue four alleges that District denied Student a FAPE when it failed in Student's March 2008 IEP to adhere to the procedural safeguards of the IDEA by refusing to provide Student with a home based educational program because of his medical needs. Student also alleges that District intentionally discriminated against Student relating to his medical issues and inappropriately induced Student to waive his minor's rights. Student's resolutions include seeking an order extending the statute of limitations. As discussed above, because an NOI only addresses the sufficiency of the pleading, and not the merits or statute of limitations issues, issue four is sufficiently pleaded to put District on notice of the issue to prepare for a resolution session, mediation and hearing.[9]

ORDER

1. Issues 2, 3 and 4 of the complaint are sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

2. Issue 1 of the complaint is insufficiently pled under Title 20 United States Code section 1415(c)(2)(D).

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

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

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[9] District argues in its NOI that issue four is the subject of a separate motion to dismiss. That motion will be addressed in a separate order.

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues 2, 3 and 4 in Student's complaint.

Dated: November 29, 2011

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings