BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. PALMDALE SCHOOL DISTRICT.	OAH CASE NO. 2012040464 ORDER PARTIALLY GRANTING NOTICE OF SUFFICIENCY

On April 12, 2012[1] Student's educational rights holders (Parents), through their attorney, filed a request for mediation and due process hearing [2] (complaint) on Student's behalf naming District. On April 26, 2012, District timely 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.[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 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

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[1] Student's complaint was filed with OAH after 5:00 p.m. on April 11, 2012 and therefore it is deemed filed on April 12, 2012.

[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).

[4] 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.[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 alleges that he is in the second grade and attends a District elementary school. He is eligible for special education services under the categories of specific learning disability and speech and language. Student alleges that in his "last" individualized education program (IEP) District reduced Student's resource specialist program (RSP) from 450 minutes to 360 minutes, and that Parents did not believe he had made sufficient progress to justify the reduction. Student also alleges that Parents requested but were denied access to RSP records, that Student's counselor increased Student's counseling time without notice or permission from Parents, that Parents requested an IEP on November 15, 2011, and that District has not scheduled an IEP since the request. Student also alleges that Parents requested an assessment plan for speech and language and a functional behavior assessment (FBA), and that District did not provide an assessment plan in response. Student also alleges that District failed to provide behavior interventions and failed to create and implement strategies to address his unique needs. Student identifies proposed resolutions which include 1) compensatory education, including intensive academic instruction in math and language arts and reading, 2) one-to-one tutoring, 3) speech and language services, 4) counseling, 5) a functional analysis assessment (FAA), 6) a FBA and 7) a speech and language assessment.

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[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).

Student's complaint alleges the following issues, some of which are sufficient and others of which are insufficient.

In Issue 1, Student contends that, from and after November 15, 2012[9], District denied Parents' their procedural rights to meaningful participation in the development of Student's educational plan because District failed to timely hold an IEP team meeting in response to Parents' November 15, 2011 request for an IEP. When read in conjunction with Student's brief statement of facts and his proposed resolutions, Issue 1 is sufficiently pleaded to put District on notice of the issue so that it may participate in a resolution session and mediation and prepare for hearing.

In Issue 2, Student contends that District procedurally and substantively denied Student a FAPE by failing to assess Student in all areas of suspected disability, including speech and language and behavior, in response to Parents' request for assessments. As a result, District failed to provide Student with appropriate behavior interventions and create appropriate supports and strategies to meet his unique needs. However, Student does not state when Parents requested the assessments, to whom the request was directed, or in what specific areas of need Parents actually requested assessments. Because Student alleges in Issue 2 that District denied Parents the right to meaningful participation in the development of Student's educational plan, he has not alleged enough facts to support that part of this claim. Therefore, Student has failed to state sufficient facts to support Issue 2 and it is insufficient. Student may amend the complaint to clarify Issue 2, and an amendment should include when and how the assessments were requested, what types of assessments were requested, and to whom the request for assessments was made.

Student's Issue "3" lists redundant and inconsistent subparts. Based on a reading of the entire Issue 3 as alleged, the following analysis identifies what the undersigned ALJ interprets the remaining issues to be.

In Issue 3, Student alleges that, from and after November 15, 2011, District denied Student a FAPE and deprived Parents' of their procedural rights to meaningfully participate in the development of Student's educational plan by 1) unilaterally reducing the number of minutes provided for counseling services in Student's last IEP without notice to Parents, and 2) because District did not notify Parents as to whether or not Student's behavior required a subsequent increase in counseling services, or that Student required assessments to address behavior. Issue 3 does not allege which IEP is at issue, when the proposed change was made, whether it was made at an IEP meeting or at some other time and how Parents became aware of the proposed or actual change. Because the gravamen of this claim appears to be directed at Parents' right to meaningful participation, Student has failed to state sufficient facts to support Issue 3 and it is therefore insufficient. Student may amend the complaint to clarify Issue 3, and an amendment should include facts consistent with this analysis.

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[9] The undersigned ALJ will assume that this is a typographical error and that Student intended the date to be November 15, 2011.

In Issue 4 (described in the complaint as 3(b)), Student alleges that District denied Student a FAPE by depriving Parents' of their procedural rights to meaningfully participate in the development of Student's educational plan by failing to respond to Parents' written request for Student's records relating to "minutes students spent in the resource program." It alleges that Parent made a written request "for student's records" including "minutes students spent in the resource program." Student also alleges that District's failure to provide the records cause a delay in "parents knowing what issues she (sic) needed to address." Issue 4 is ambiguous. It is not clear whether requested records related to other students, to only Student, or something else. It also does not state when Parents made a request for records, to whom, or whether Parents' right to participate in the development of Student's educational plan were actually affected. Therefore, Student has failed to state sufficient facts to support Issue 4 and it is insufficient. Student may amend the complaint to clarify Issue 4, and an amendment should include facts consistent with this analysis.

In Issue 5 (described as 3(c) on one page, and 3(d) on the next), Student alleges that District has denied Student a FAPE because it failed to offer Student sufficient RSP services to address his unique educational needs. Student alleges that he has not made progress towards his goals justifying a reduction in services, a statement not supported by any additional facts. Issue 5 also does not identify which IEP or IEP's are at issue, in what areas or goals he has not made progress, or in what areas of need he contends he requires more resource services than offered by the District. It is therefore insufficient. Student may amend the complaint to clarify Issue 5, and he should include reference to the relevant IEPs and sufficient facts as described in this analysis to put District on notice of the claim.

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 proposed resolutions stated in Student's complaint are sufficiently defined. Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

ORDER

1. Issue 1 of Student's complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

2. Issues 2, 3, 4 and 5 of Student's complaint are 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).[10]

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

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.

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issue 1 in Student's complaint.

Dated: April 30, 2012

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings