BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. CORONA-NORCO UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018051219 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On May 25, 2018 Student filed a Due Process Hearing Request[1] with the Office of Administrative Hearings naming Corona-Norco Unified School District. On May 30, 2018, Corona-Norco filed a Notice of Insufficiency 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. (20 U.S.C. § 1415(b) & (c).) 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. (20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).) 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. (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." (Sen. Rep. No. 108-185, *supra*, at p. 34.) The pleading requirements should be liberally construed in light of the

[1] A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 U.S.C. section 1415(b)(7)(A).

broad remedial purposes of the IDEA and the relative informality of the due process hearings it authorizes. (*Alexandra R. ex rel. Burke v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, CIV. 06-CV-0215-JL) 2009 WL 2957991[nonpub. opn.]; *Escambia County Bd. 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, 8:04CV2657T24EAJ) 2005 WL 2850076 [nonpub. opn.]; but cf. *M.S.-G v. Lenape Regional High School Dist. Bd. of Educ.* (3d Cir. 2009) 306 Fed.Appx. 772, 775 [nonpub. opn.].) Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge. (*Assistance to States for the Educ. of Children with Disabilities & Preschool Grants for Children with Disabilities* (Aug. 14, 2006) 71 FR 46,540-46541, 46699.)

DISCUSSION

Student's complaint alleges 13 claims in the complaint, some of which are sufficient and some which are insufficient.

1. Did Corona-Norco fail to provide Student a free appropriate public education (FAPE) by failing to offer sufficient services to provide an educational benefit.

With respect to Issue 1, Student's complaint fails to put Corona-Norco on notice for which IEP Student is challenging, which school year Student is challenging, and which services Student did not receive that is the basis of Student's complaint. This issue is insufficiently pled.

2. Did Corona-Norco create a hostile environment and retaliate against Student thus denying him a FAPE.

With respect to Issue 2, Student pleads by Corona-Norco attempting to exit Student from Special Education it created a hostile environment or retaliation occurred. This is sufficiently pled.

3. Did Corona-Norco deny Student a FAPE by failing to address his unique needs by developing appropriate goals and objectives?

With respect to Issue 3, Student pleads no facts that would put Corona-Norco on notice as to which IEP, which specific needs, and what goals were needed to provide Corona-Norco with sufficient notice. This issue is insufficiently pled.

4. Did Corona-Norco deny Student a FAPE by failing to assess Student in all areas of suspected disability?

With respect to Issue 4, Corona-Norco is on notice that Student is alleging since 2013 Student was not assessed in all areas of suspected disability. Further, Student states in his pleading that all facts plead outside the statute of limitations are for foundational

purposes only. Thus, sufficient facts are pled to put Corona-Norco on notice with respect to Issue 4.

5. Did Corona-Norco fail to provide Student a FAPE in the least restrictive environment?

With respect to Issue 5, Student pleads no facts that would support Student's current placement is not in the least restrictive environment. The pleading is unclear whether Student is asserting placement required a more or less restrictive environment. This issue is insufficient.

6. Did Corona-Norco deny Student a FAPE by failing to provide accurate levels of functioning at the May 2018 IEP?

With respect to Issue 6, Student provided Corona-Norco sufficient notice that he intends to challenge the accurate present levels of functioning at the May 2018 IEP.

7. Did Corona-Norco deny Student a FAPE by failing to implement his May 2015 IEP?

With respect to Issue 7, Corona-Norco argued this issue is vague. Student is pleading an issue outside the statute of limitations period and stated unequivocally that all facts outside the statute of limitations are foundational only. Moreover, Student states this basis is for a lack of consult to a teacher. Which teacher or for what purposes is lacking in Student's complaint and the issue is insufficiently pled.

8. Did Corona-Norco procedurally deny Student a FAPE by failing to provide Mother with prior written notice regarding the proposed change of Student's identification?

With respect to Issue 8, Corona-Norco argued it was vague. Student's single sentence pleading is insufficient to put Corona-Norco on notice as to the identification change to which Student is referring. This issue is insufficiently pled.

9. Did Corona-Norco fail to provide Student a FAPE by making a predetermined offer of placement and services and prohibiting Student's Parents from meaningful participation in the IEP process?

With respect to Issue 9, Corona-Norco argued the issue was vague. Student made an allegation that Corona-Norco recommended Student be assessed for specific learning disability without parental participation. Student does not provide a time frame for when Parent was denied participation, nor does Student identify which assessments Parents were denied input on. This issue is insufficiently pled.

10. Did Corona-Norco deny Student a FAPE by attempting to exit him from special education services without a written request to revoke consent from Parent?

With respect to Issue 10, Corona-Norco argues the issue is vague. Corona-Norco should know when it attempted to exit Student from Special Education. This issue is sufficient to put Corona-Norco on notice.

11. Did Corona-Norco deny Student a FAPE by failing to conduct an appropriate assessment within sixty days of receiving Parents signed assessment plan?

With respect to Issue 11, Corona-Norco argues the issue is vague. Student provides no factual basis as to when the assessment plan was requested, consented to, or when Corona-Norco failed to conduct the assessment. This issue is insufficient to put Corona-Norco on notice.

12. Is Corona-Norco obligated to provide an independent educational evaluation assessment at public expense?

With respect to Issue 12, Student pleads this as a conclusory statement without providing any factual basis that an independent assessment was requested by parent. This issue is insufficiently pled.

13. Did Corona-Norco deny Student a FAPE, therefore Student is entitled to compensatory education.

With respect to Issue 13, Student pleads a remedy as an issue to be decided at due process hearing. There is no factual basis provided by Student sufficient to put Corona-Norco on notice as to the time period or the factual basis underlying Student's claim here. This issue is insufficiently pled.

ORDER

1. Issues 2, 4, 6 and 10 of Student's complaint are sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).

2. Issues 1,3,5,7-9, 11-13 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).[2]

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[2] 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 U.S.C. 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 Issues 2, 4, 6 and 10 of Student's complaint.

DATE: May 31, 2018

DocuSigned by:
Tiffany Gilmartin
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TIFFANY GILMARTIN
Administrative Law Judge
Office of Administrative Hearings