BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: STUDENT, v. TORRANCE UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013041006 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On April 23, 2013 Student,[1] through his attorney, filed a Due Process Hearing Request[2] (complaint) naming the Torrance Unified School District (District). On May 8, 2013, District 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. (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

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1 Student is nineteen years of age, and as such, brings this case on his own behalf.

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).

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 Individuals with Disabilities Education Act (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] Based on the alleged facts in the complaint, and the supporting information provided regarding the issues discussed below, Student's complaint is found to be legally sufficient.[8]

DISCUSSION

Student's complaint contains five issues for hearing. All of the issues include facts alleging that at various times between April 2011 and April 2013, District denied him a FAPE by failing to provide him with an appropriate placement and program designed to enable him to make adequate educational progress. As discussed below, Student's compliant is found sufficient. The issues are discussed more specifically below.

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[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).

[8] Some of Student's issues are broad and generalized. Therefore, this determination of sufficiency regarding Student's Issue One through Five is limited to the allegations identified herein below, and as pled in the complaint with adequate supporting facts. If Student intends to raise other issues or make additional allegations not otherwise identified herein, such other issues are found to be insufficiently pled. Student must file an amended complaint with sufficient facts to support any other or additional allegations or issues.

Issue One. Student's Issue One alleges that between April 2011 and April 2013, and particularly through his October 2011 and October 2012 individualized education programs (IEP's), District denied him a FAPE by failing to provide him with an appropriate placement and program designed to enable him to make adequate educational progress. In support of this claim, Student alleges that District failed to adequately address his behavioral issues through his IEP's, and describes those behavioral concerns at length.

Student's Issue One provides District an awareness and understanding of the allegations forming the basis of the complaint. Issue One makes sufficient allegations against District, and provides related facts sufficient to allow District to prepare a defense, and participate in a resolution session and mediation. Accordingly, Student's Issue One is sufficiently pled against District.

Issue Two. Student's Issue Two alleges that District denied him a FAPE because District failed to implement appropriate behavioral intervention mechanism. Here, Student contends that his behavioral issues, described at length in Issue One, escalated in his 10th grade year in frequency, nature and intensity, and that District failed to implement an appropriate or effective behavioral intervention in response to his worsening behavior. As such, Student alleges that he was denied a FAPE.

Student's Issue Two provides District an awareness and understanding of the issues forming the basis of the complaint. Issue Two makes sufficient allegations against District, and provides related facts sufficient to allow District to prepare a defense, and participate in a resolution session and mediation. Accordingly, Student's Issue Two is sufficiently pled against District.

Issue Three. In Issue Three, Student alleges that District denied him a FAPE because District failed to provide an adequate psychoeducational assessment in October 2011, because the assessment failed to evaluate Student in all areas of suspected disability as required by law. Student contends that the psychoeducational assessment was inadequate in the areas of behavior and academic performance, and also because it failed to investigate whether Student is actually autistic contrary to prior classification. Thus, Student argues that he was denied a FAPE due to the deficits in the assessment.

Student's Issue Three provides District an awareness and understanding of the issues forming the basis of the complaint. Issue Three makes sufficient allegations against District, and provides related facts sufficient to allow District to prepare a defense, and participate in a resolution session and mediation. Accordingly, Student's Issue Three is sufficiently pled against District.

Issue Four. In Issue Four, Student alleges that he was denied a FAPE because District failed to implement his behavior intervention plan, and failed to conduct a functional analysis assessment (FAA). In support, Student alleges that District conducted a functional

behavioral assessment (FBA) in June 2011, rather than a statutorily required FAA despite his escalating behavioral issues. As such, Student argues that he was denied a FAPE.

Student's Issue Four provides District an awareness and understanding of the issues forming the basis of the complaint. The issue makes sufficient allegations against District, and provides related facts sufficient to allow District to prepare a defense, and participate in a resolution session and mediation. Accordingly, Student's Issue Four is sufficiently pled against District.

Issue Five. Student Issue Five alleges that District denied him a FAPE because Student's October 2012 individualized transition plan (ITP) was not appropriate. Here, Student alleges that District failed to implement an appropriate ITP because the ITP: 1) failed to take Student's individual ability, performance and interests into account in creating the goals; 2) failed to base the goals and services on current information about Student because the ITP merely copied the prior year's ITP and did not have current information about Student.

Student's Issue Five provides District an awareness and understanding of the issues forming the basis of the complaint. This issue makes sufficient allegations against District, and provides related facts sufficient to allow District to prepare a defense, and participate in a resolution session and mediation. Accordingly, Student's Issue Five is sufficiently pled against District.

Proposed Remedies

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); Ed. Code, § 56500.2, subd. (c)(4)(E).) The proposed resolutions stated in Student's complaint are well-defined, and as such they meet the statutorily required standard of stating a resolution to the extent known and available at this time.

In his complaint, Student seeks a number of remedies including an order directing District to fund: 1) an independent transition expert to provide an appropriate transition plan for Student; 2) compensatory services according to prove; 3) an assessment in the area of educationally related mental health service; 4) independent FAA; 5) an independent psychoeducational assessment; and 6) the independent assessor's attendance at the IEP team meeting determining Student's placement and services. Student's proposed resolutions are sufficiently identified. Thus, Student's complaint is sufficiently pled on this ground as well.

ORDER

1. Issues One through Five of Student's complaint are sufficiently pled, and thus Student's complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).

2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: May 10, 2013

/s/
ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings