BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. TORRANCE UNIFIED SCHOOL DISTRICT; WISEBURN SCHOOL DISCTRICT.	OAH CASE NO. 2013060141 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On May 31, 2013, Student filed a Due Process Hearing Request (complaint) naming the Torrance Unified School District (Torrance) and Wiseburn School District (Wiseburn) as Respondents.

On June 14, 2013, Torrance 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.[1] 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

[1] 20 U.S.C. § 1415(b) & (c).

to know how to prepare for the hearing and how to participate in resolution sessions and mediation.[2]

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint."[3] 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.[4] Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.[5] 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.

DISCUSSION

As to Torrance, Student's complaint alleges four issues. Each issue relates to a denial of a FAPE due to alleged procedural and substantive failures by Torrance. In the complaint, Student alleges that at various times between 2011 and 2013, certain acts or omissions by Torrance denied him a FAPE. As discussed more specifically below, Student's complaint is found sufficient.

Issue One. Student's Issue One alleges a procedural failure. Student claims that during the 2011-2012 school year (SY) and the 2012-2013 SY, Torrance impeded his Parents' rights to meaningfully participate in the individualized education program (IEP) process, and thus denied him a FAPE. Under this issue, Student identified 12 different alleged violations and presented over 10 pages of details including the legal and factual basis for each alleged violation. The complaint provides adequate supporting facts for each.

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

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

[4] *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.].

[5] 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).

Therefore, Student's Issue One provides Torrance an awareness and understanding of the allegations forming the basis of this issue. Issue One raises sufficient allegations against Torrance, and provides related facts sufficient to allow Torrance the opportunity to prepare a defense and participate in a resolution session and mediation. Accordingly, Student's Issue One is sufficiently pled against Torrance.

Issue Two. Student's Issue Two alleges that Torrance denied him a FAPE because Torrance failed to assess him in all areas of suspected disability as required by law. More specifically, Student alleges that between June 2011 and April 2013, Torrance failed to conduct an appropriate initial speech and language assessment of him; failed to conduct other needed assessments in the areas of educationally related mental health services, auditory processing, psychoeducation; and failed to conduct needed reevaluation/further assessment of him in order to determine his unique needs.

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

Issue Three. In Issue Three, Student alleges that Torrance denied him a FAPE because Torrance erroneously determined at the April 2013 IEP team meeting that Student no longer qualifies for special education and related services as a child with either a speech and language impairment (SLI), or specific learning disability (SLD) under IDEA.

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

Issue Four. In Issue Four, Student alleges that during the 2009-2010, 2010-2011 and 2011-2012 SYs, Torrance denied him a FAPE because Torrance failed to make IEP offers that were designed to meet his unique needs and provide educational benefits. Here, Student discusses several IEP's and identifies various alleged inadequacies in the IEP's. The complaint provides adequate supporting facts for the alleged violations in several pages.

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

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 finding that Student is/continues to be eligible for special education and related services, and directing Torrance to: 1) develop an appropriate IEP for him; 2) fund an independent evaluation in the area of auditory processing; 3) reimburse his Parents for the costs of obtaining their privately obtained evaluations in the areas of neuropsychology and psychoeducation; 4) provide compensatory speech and language services and educationally related mental health services; and 5) provide compensatory education in the form of academic instruction from Lindamood Bell. Prospectively, Student seeks placement for the 2013-2014 SY in a small classroom setting including, but not limited to speech and language services and instruction, group social skills instruction, counseling services, and educationally related mental health 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 Four 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: June 17, 2013

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