BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. TORRANCE UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013060358 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On June 10, 2013, Parents on behalf on Student (Student) filed a Due Process Hearing Request[1] (complaint) naming the Torrance Unified School District (District).

On June 25, 2013, the 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.[2] 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.[3] These requirements prevent vague and confusing complaints, and promote fairness by providing the

[1] 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).

[2] 20 U.S.C. § 1415(b) & (c).

[3] 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.[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 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]

DISCUSSION

Student's complaint contains 17 "problems" or issues. In issues one through five, Student alleges that the District failed to provide him with a free appropriate public education (FAPE) in the least restrictive environment (LRE) at Student's February 8, 2011 individualized education program meeting because the District did not: 1) offer appropriate behavior support including a trained, full-time one-on-one aide to address Student's maladaptive behaviors; 2) develop goals to address all of Student's deficits; 3) offer a program that was scientifically based, to the extent practicable, upon peer-reviewed research; 4) offer an appropriate behavior support plan; and 5) implement the behavior services and behavior support plan which were in place.

In issues six through 10, Student alleges that the District failed to provide him with a FAPE in the LRE at Student's April 19, 2012 IEP meeting for substantially the same reasons as alleged regarding Student's February 8, 2011 IEP, by failing to: 6) offer appropriate behavior support including a trained, full-time one-on-one aide and home-based behavior services to address Student's maladaptive behaviors; 7) develop goals to address all of Student's deficits; 8) offer a program that was scientifically based, to the extent practicable,

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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).

upon peer-reviewed research; 9) offer an appropriate behavior support plan; and 10) implement the behavior services and behavior support plan which were in place.

In issues 11 through 17, Student alleges that the District failed to offer him a FAPE in the LRE at a series of IEP meetings held between February 14, 2013, and May 28, 2013, because the District failed to: 11) offer appropriate behavior support including a trained, full-time one-on-one aide and home-based services to address Student's maladaptive behaviors; 12) develop goals to address all of Student's deficits; 13) offer a program that was scientifically based, to the extent practicable, upon peer-reviewed research; 14) offer an appropriate behavior support plan; and 15) implement the behavior services and behavior support plan which were in place. Student also alleges that the District committed procedural violations by failing to conduct a functional analysis assessment of Student to address his aggressive and self-injurious behavior (issue 16) and by refusing to allow Student's independent assessor to observe Student in his classroom (issue 17).

The District first contends that all of Student's issues are deficient because they do not contain enough supporting facts that inform the District of the nature of the problems alleges or to understand Student's proposed resolutions.

The District's contentions are not well-taken. Student's complaint explains the basis for each of his allegations. He explains the behavior he was exhibiting as a basis for his contentions that the District did not properly provide sufficient behavior support. Student identifies the areas in which he believes the District should have developed goals but contends that it did not. Student states what he contends are the deficiencies in the behavior support plans the District developed for him. Finally, Student describes the bases for his contentions that the District committed procedural violations. The allegations are therefore sufficient to put the District on notice of the issues forming the basis of the complaint. Student's complaint identifies the issues and adequate related facts about the problem to permit the District to respond to the complaint and participate in a resolution session and mediation.

The District also contends that Student has not stated sufficient facts to support issues one through five because these allegations are based on an IEP meeting that took place outside of the applicable two year statute of limitations. The District's contentions in this regard are more appropriately raised in a motion to dismiss.

ORDER

1. The 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 26, 2013

/s/
DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings