BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. FILLMORE UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013040453 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On April 8, 2013, Parent, on behalf of Student (Student), filed a Request for Due Process Hearing[1] (complaint) naming the Fillmore Unified School District (District).

On April 22, 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.[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. (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] 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).

to know how to prepare for the hearing and how to participate in resolution sessions and mediation.[3]

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint."[4] 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.[5] Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.[6] 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.[7]

DISCUSSION

Student's complaint contains six issues for hearing. All of the issues relate to District, and include various facts alleging that at different periods between 2009 and 2013 certain

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

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

[5] *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.].

[6] 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).

[7] This determination of sufficiency regarding Student's Issue One through Six 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.

District's actions or omission denied Student a FAPE. As discussed below, Student's compliant is found sufficient. [8]

Issue One. Student's Issue One alleges that since 2009, District denied Student a FAPE because District failed to address or investigate bullying and teasing of Student by his peers. In support of the allegation Student alleges that he was bullied in March 2011, April 2011 and January 2012, when other students attacked him.

In Issue One, Student alleges that District denied him a FAPE because District failed to prevent others from bullying him, and thus violated his IDEA rights. Student's Issue One provides District an awareness and understanding of the issues 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. In Student's Issue Two, Student alleges that in February 2012 and May 2012 his teacher yelled at him, used physical restraint against him, and isolated and humiliated him, when the teacher placed masking tape around his desk. Thus, Student contends that he was denied a FAPE because his teacher did not have the experience needed to respond to his special needs.

Here also, 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 Student's Issue Three, Student alleges that District denied him a FAPE because District singled him out and suspended him due to an incident that occurred on 2013 Valentine's Day, when the other students involved in the incident were not suspended.

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.

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[8] While District may be correct that some of the alleged violation occurred outside of the two-year statute of limitations period, this, in itself, is not sufficient to find the complaint insufficient.

Issue Four. Student's Issue Four alleges that District denied Student a FAPE because District failed to provide Student with an academic program that adequately met Student's need for individual attention and address his attention deficit hyperactivity disorder (ADHD).

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. In Issue Five, Student alleges that during the 2012-2013 SY, District denied him a FAPE because Student's teacher failed to always check Student's homework to ensure that Student was on track and/or catching up in his grade level work.

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.

Issue Six. Lastly, Student's Issue Six alleges that, since Student was in kindergarten, District denied Student a FAPE because District failed to properly assess Student regarding his ADHD and need for behavioral services.

Based on the factual information provided, Student's Issue Six 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 Six 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).) 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 a change of placement. Particularly, Student requests that District place him at Valley Oaks Charter School and provide appropriate transportation to support the placement. Also, Student request he should be assessed in all areas of suspected disability. As provided in Student's complaint, and based on the forgoing discussion, Student's proposed resolutions are sufficiently identified. Therefore, Student's complaint is sufficiently pled.

ORDER

1. Issues One through Six 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: April 23, 2013

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