

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TORRANCE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013110472

ORDER DENYING NOTICE OF
INSUFFICIENCY

On November 13, 2013 Student filed a Due Process Hearing Request¹ (complaint) naming Torrance Unified School District (District). On November 20, 2013, District timely filed a Notice of Insufficiency (NOI) as to Student's complaint. For the reasons discussed below, the NOI is denied.

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 consists of a five and one half page factual history, followed by articulated issues. Student alleges that he is 18 years old; that he has assigned his educational rights to a specified adult; that he presently lives, and during the 2011-2012 and 2012-2013 school years lived, within the District’s boundaries; that he is eligible for special education as emotionally disturbed; and that District matriculated him in 2013. Student also alleges facts relating to his personal and educational history, including his requests for services and supports from the district.

Although Student alleges in the complaint that some of his claims may fall outside of the 2 year statute of limitations, and he seeks relief in the complaint from the statute of limitations, the issue of the applicability of statute of limitations is not appropriately addressed in an NOI and will therefore not be part of this analysis.

The issues articulated below have been renumbered for clarity and consistency.

Issue 1 alleges that District denied Student a FAPE from February 2011 to October 2013 by failing to timely offer him an appropriate placement. Student alleges that District

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).

failed to timely find him eligible for special education services in 2011, thereby delaying placing him in an appropriate setting to meet his specific emotional and psychological needs. The issue is adequately supported by facts sufficient to put District on notice of the issue and prepare for and participate in a resolution session, mediation and hearing. Issue 1 is sufficiently pled.

Issue 2 alleges that from August 2011 through the present school year District failed to assess Student in all areas of suspected disability, including conducting a neurological assessment, an appropriate functional behavioral assessment, a social behavioral assessment, a mental health assessment, an assistive technology assessment, and an auditory assessment. Student alleges that District has not addressed his academic disabilities because his behaviors have been the focus of attention, that District placed him on graduation track instead of allowing him to remain in school until the age of 21, and that his needs have not been fully identified or adequately addressed and his goals not achieved. When read in conjunction with the entire complaint, Issue 2 is adequately supported by facts sufficient to put District on notice of the issue and prepare for and participate in a resolution session, mediation and hearing. Issue 2 is sufficiently pled.

Issue 3 alleges that District denied Student a FAPE from August 2011 to the present school year by failing to offer Student appropriate related services including counseling, a one-to-one aide, and a behavior support plan. Student alleges that District knew that his behavioral issues impacted his learning; that his behavior issues remained consistent throughout his matriculation; and that no one ever reported that his behavior had improved. When read in conjunction with the entire complaint, Issue 3 is adequately supported by facts sufficient to put District on notice of the issue and prepare for and participate in a resolution session, mediation and hearing. Issue 3 is sufficiently pled.

Issue 4 alleges that, from the time Student turned 16, District failed to offer him an appropriate transition program, including appropriate transition goals. When read in conjunction with the entire complaint, Issue 4 is adequately supported by facts sufficient to put District on notice of the issue and prepare for and participate in a resolution session, mediation and hearing. Issue 4 is sufficiently pled.

Student proposes six different resolutions, including seeking assessments, individual counseling, a return to school in a vocational program until he is 21 years old, and compensatory education. The resolutions are sufficiently pled.

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: November 25, 2013

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings