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. 2013041191 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On April 29, 2013, Parents, on behalf of Student (Student), filed a Request for Due Process Hearing[1] (complaint) naming the Torrance Unified School District (District).

On May 14, 2013, District filed a Notice of Insufficiency (NOI) as to Student's complaint, and requested that Student's compliant be dismissed due to insufficiency.[2]

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

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[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] Because Student's complaint is found sufficient as discussed herein below, District's request to dismiss the complaint due to insufficiency is denied.

[3] 20 U.S.C. § 1415(b) & (c).

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 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]

DISCUSSION

Student's complaint contains 12 issues for hearing. All of the issues relate to District, and include facts alleging various violations by District against Student. While some of the issue statements (headings) appear broad and non-time specific, the supporting facts provided under each issue are adequate and specific as to the allegations being made against the District and the relevant time periods involved. Therefore, as discussed below, based on a totality of Student's complaint and the alleged facts in the complaint, Student's compliant is found sufficient. [8]

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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] This determination of sufficiency regarding Student's Issue One through Twelve is based on the alleged facts in Student's complaint. The parties shall clarify each issue further during the prehearing conference, which shall be held prior to the due process haring.

Issue One. Student's Issue One alleges that District denied Student a FAPE because District failed to offer Student any speech and language services and failed to develop any goals and objectives to address Student's significant unique language and communication needs. Under Issue One, Student provides adequate supporting facts and identifies the time period for the alleged failures. Thus, Issue One provides District an awareness and understanding of the issues forming the basis of the allegation. 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 assess him in all areas of suspected disability. Issue Two identifies the assessment(s) that District failed to conduct and the time period for the alleged failures. Thus, Student's Issue Two provides District an awareness and understanding of the issues forming the basis of the allegation. 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 consider or address Student's assistive technology (AT) needs or services in the classroom. Issue Three contends that District failed to meet Student's AT needs because District failed to address Student's fine motor difficulty relating to writing. Therefore, Student's Issue Three provides District an awareness and understanding of the issues forming the basis of the allegation. Accordingly, Student's Issue Three is sufficiently pled against District.

Issue Four. Student's Issue Four alleges that District denied Student a FAPE because District failed to consider or address Student's communication needs. Under Issue Four, among others, Student alleges that Student is nonverbal and District failed to provide Student with an augmentative and alternative communication (AAC) device as recommended by District's assessor and Dr. Simun. Thus, Issue Four provides District an awareness and understanding of the issues forming the basis of the allegation. Accordingly, Student's Issue Four is sufficiently pled against District.

Issue Five. Issue Five alleges that District denied Student a FAPE because District failed to ensure that its assessments of Student were administered in the language and form most likely to yield accurate information about Student. Issue Five alleges that because Student is nonverbal, District assessments were inappropriate because District did not utilize sign language or an AAC device to assess Student. Therefore, Issue Five provides District an awareness and understanding of the issues forming the basis of the allegation. Accordingly, Student's Issue Five is sufficiently pled against District.

Issue Six. Student's Issue Six alleges that District denied Student a FAPE because District failed to implement Student goals and objectives to which parents provided consent. Student Issue Six identifies the relevant individualized educational program (IEP) and those goals that District failed to implement. Issue Six provides District an awareness and understanding of the issues forming the basis of the allegation. Accordingly, Student's Issue Six is sufficiently pled against District.

Issue Seven. Though framed differently, Student's Issue Seven is similar to Issue Six. It alleges that District denied him a FAPE because District failed to work on Student's goals and objectives unless parents consented to placement. Under this issue, Student provides supporting facts similar to those provided under Issue Six, and identifies the relevant IEP and the goals that District failed to implement. Therefore, Issue Seven provides District an awareness and understanding of the issues forming the basis of the allegation. Accordingly, Student's Issue Seven is sufficiently pled against District.

Issue Eight. Issue Eight alleges that District denied Student a FAPE by failing to implement Student's goals and objectives and failing to provide Student special education placement and services during the extended school year. Student Issue Eight identifies the relevant IEP relating to the failures, including the goals, placement and services that District allegedly failed to implement. Thus, Issue Eight provides District an awareness and understanding of the issues forming the basis of the allegation, and accordingly, Student's Issue Eight is sufficiently pled against District.

Issue Nine. Student's Issue Nine alleges that District denied Student a FAPE because District predetermined its IEP offer and failed to consider whether Student could benefit from placement in a regular education setting with supplementary aids and supports before offering a more restrictive special day class placement. Under Issue Nine, Student provides adequate supporting facts and identifies the relevant IEP team meeting where the alleged violation occurred. Thus, Issue Nine provides District an awareness and understanding of the issues forming the basis of the allegation. Accordingly, Student's Issue Nine is sufficiently pled against District.

Issue Ten. Student's Issue Ten alleges that District denied him a FAPE because District failed to offer him necessary and appropriate speech and language, and social skills services. Issue Ten provides adequate supporting facts and identifies the time period and the circumstances of the alleged failures. As such, Student's Issue Ten provides District an awareness and understanding of the issues forming the basis of the allegation. Accordingly, Student's Issue Ten is sufficiently pled against District.

Issue Eleven. In Issue Eleven, Student alleges that he was denied a FAPE because District failed to consider the independent psychoeducational assessment conducted by Dr. Simun. Issue Eleven provides adequate supporting facts and identifies the relevant IEP team meeting where the alleged violation occurred. Student's Issue Eleven provides District an awareness and understanding of the issues forming the basis of the allegation. Accordingly, Student's Issue Eleven is sufficiently pled against District.

Issue Twelve. Student's Issue Twelve alleges a procedural failure. Student alleges that District denied Student a FAPE because District failed to have the required individuals at the June 12, 2012 IEP team meeting. The issue provides District an awareness and understanding of the issues forming the basis of the allegation. Accordingly, Student's Issue Twelve is sufficiently pled against District.

Overall, based on the totality of Student's complaint, the specific allegations and the factual information provided, Student's Issues One through Twelve provide District with an awareness and understanding of the issues forming the basis of the complaint. The complaint provides related facts sufficient to allow District to prepare a defense, and participate in a resolution session and mediation. Accordingly, Student's complaint 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.

Student's complaint sufficiently identified many cognizable remedies under the IDEA, including the request that OAH issue a decision finding for the Student on all issues. In addition, Student requests the OAH direct District to fund Student's: 1) independent AT/AAC evaluation and the provision of AT/AAC services, equipment and training pursuant to the evaluation's recommendations; 2) placement at a non-public school; 3) compensatory education and services (including AAC, speech and language and social skills and behavioral intervention services); and/or reimbursement of all cost to parents in lieu of compensatory education and services. As provided in Student's complaint, and based on the forgoing discussion, Student's proposed resolutions are sufficiently identified. Therefore, on this ground as well, Student's complaint is sufficiently pled. This order does not make a finding on whether OAH has jurisdiction to grant some of the remedies requested by Student.

ORDER

1. Issues One through Twelve in Student's complaint are sufficiently pled, and 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 15, 2013

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings