

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SADDLEBACK VALLEY UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2012120307

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On December 7, 2012, Parent on behalf of Student (Student) filed a Due Process Hearing Request¹ (complaint) naming the Saddleback Valley Unified School District (District).

On December 21, 2012, 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

DISCUSSION

Student’s complaint contains one issue with five sub-issues for hearing. The complaint alleges that, during the 2011-2012 and 2012-2013 school years (SYs), District denied Student his right to a FAPE. As discussed below, Student’s complaint is found sufficient.

Statement of the Issue(s)

Issue Number 1a. In Student’s Issue 1a, Student alleges that, during the 2011-2012 and 2012-2013 SYs, District denied him a FAPE because District failed to offer him an appropriate transition plan from middle school to high school. Issue 1a identifies a problem and provides related facts sufficient to allow District to prepare a defense, and participate in a resolution session and mediation. Accordingly, Student’s Issue 1a is sufficiently pled.

Issue Number 1b. Here also in Student’s Issue 1b, Student alleges that, during the 2011-2012 and 2012-2013 SYs, District denied him a FAPE because District failed to develop and implement an appropriate behavior support plan (BSP) to address his

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).

maladaptive behaviors in the school setting. As also found above, Issue 1b identifies a problem and provides related facts sufficient to allow District to prepare a defense, and participate in a resolution session and mediation. Thus, Student's Issue 1b is sufficiently pled also.

Issue Number 1c. Here, Student alleges that, during the 2011-2012 and 2012-2013 SYs, District denied him a FAPE because District failed to assess his behavioral needs including autistic-like behaviors. Based on the totality of the facts presented, Student's Issue 1c concerns the alleged failure by District to conduct a behavioral assessment, including autistic-like behaviors, of Student. The sub-issue adequately identifies a problem and provides related facts sufficient to allow District to prepare a defense, and participate in a resolution session and mediation. Accordingly, Student's Issue 1c is sufficiently pled.

Issue Number 1d. In Student's Issue 1d, Student alleges that, during the 2011-2012 and 2012-2013 SYs, District denied him a FAPE because District failed to provide him an appropriate educational placement, and related services to address his behaviors. Issue 1d also identifies a problem and provides related facts sufficient to allow District to prepare a defense. District could meaningfully participate in a resolution session and mediation. Therefore, Student's Issue 1d is also found to be sufficiently pled.

Issue Number 1e. In this issue, Student alleges that, during the 2011-2012 and 2012-2013 SYs, District denied him a FAPE because District failed to properly respond to parental request for an independent educational evaluation (IEE). In Issue 1e, Student contends that District simply ignored parent's request for an IEE, rather than providing the IEE at public expense or filing a request with OAH as required by law. Thus, the sub-issue identifies a problem and provides related facts sufficient to allow District to prepare a defense, and participate in a resolution session and mediation. Accordingly, Student's Issue 1e is sufficiently pled.

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).) As discussed below, the proposed resolutions stated in Student's complaint are well-defined, and therefore meet the statutorily required standard of stating a resolution to the extent known and available at this time.

As proposed resolutions, Student requests an order from OAH directing District to: 1) fund IEEs in all areas of suspected disability; 2) place Student in a nonpublic school equipped to address Student's behavioral needs; and 3) reimburse Parents of all appropriate costs. Student's proposed resolutions are adequately identified.

Therefore, Student's complaint is sufficiently pled for this reason also.

ORDER

1. Student's complaint is sufficiently pled against pursuant 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: December 26, 2012

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings