

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. 2012030567

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On March 15, 2012, Sandra Robinson, Attorney at Law, on behalf of Student, filed a Due Process Hearing Request¹ (complaint) naming the Torrance Unified School District (District).

On March 29, 2012, Sharon A. Watt, Attorney for 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.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 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 various issues for hearing regarding the District’s denial of free appropriate public education (FAPE) to Student. Student’s complaint raises several procedural and substantive issues relating to her individualized education programs (IEP’s), alleging that the IEP’s failed to provide her with appropriate and adequate special education services to meet her unique needs. As discussed below, Student’s complaint is found sufficient.

Issue Number One.⁸ Student’s Issue Number One alleges that she is entitled to a FAPE as a 13-year-old resident of the District who is yet to receive a high school diploma, and thus entitled to the protections under the IDEA because she is an individual with exceptional needs that is entitled to special education services. This issue appears to establish the jurisdiction of OAH. While a complaint is not required to plead jurisdiction as

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 The issues have been renumbered for clarity and ease of reference.

an issue, the issue is legally sufficient. The parties may further develop or eliminate this issue at the prehearing conference if jurisdiction is not disputed.

Issue Number Two. Here, Student alleges that the January 12, 2011 IEP failed to provide her with a FAPE because District's initial assessment of her was not conducted appropriately or validly. Again here, the issue raised here is specific enough to put the District on notice as to the basis of Student's claims under the IDEA. This issue is sufficiently pled.

Issue Number Three. Student's Issue Number three alleges that due to the deficiency of the District's initial assessment of Student, the January 12, 2011 IEP did not accurately document Student's present levels of performance. This issue is also found to be sufficiently pled, as it puts the District on adequate notice regarding Student's claim.

Issue Number Four. In this issue, Student alleges that that the goals contained in the January 12, 2011 IEP were not appropriate because the goals failed to address Student's behavioral, social and emotional needs, and her self-help/adaptive behavior needs. The issue here is specific and is enough to put the District on notice as to the basis of Student's claims. Thus, this issue is also found to be sufficiently pled.

Issue Number Five. Student's Issue Number Five alleges a denial of FAPE because the January 12, 2011 IEP did not include appropriate related services and supports in that the IEP failed to include a behavioral support plan to address Student's social, emotional and behavioral needs, or offer any services to address Student's self-help/adaptive behavior needs. Again here, the issue here is specific and adequate to put the District on notice as to the basis of Student's claims. Thus, this issue is found sufficiently pled.

Issue Number Six. Student's Issue Number Six alleges that the District committed various procedural violations resulting in a loss of educational opportunity for Student. First, the issue alleges that Student's grandparent (and educational right holder) was deprived meaningful participation in the development of Student's IEP because the grandparent did not have "essential information" regarding Student's needs at the time of the IEP team meeting. Further the issue alleges that Student's therapist was required, but was not at the IEP team meeting. Student's Issue Number Six is adequate to put the District on notice as to the basis of Student's claims and is found sufficiently pled.

Issue Number Seven. Here, Student alleges that the February 23, 2012 IEP failed to provide her with a FAPE because the IEP offer was not based on appropriate assessments and the offer was based on the District's inappropriate initial assessment dated January 6, 2011. As discussed above, the issue here is also found to be specific enough, and adequate to put the District on notice as to the basis of Student's claims. Thus, this issue is found sufficiently pled.

Issue Number Eight. Here, Student further alleges that due to the failure to appropriately assess her, the February 23, 2012 IEP did not contain thorough and accurate

present levels of academic, social, emotional and behavioral performance, and failed to specify the nature or extent of Student's difficulties relating to her adaptive behavioral problems. As discussed in the complaint, Student's Issue Number Eight is found to be sufficiently pled. It puts the District on adequate notice regarding Student's claim.

Issue Number Nine. Here, Student alleges that that the goals contained in the February 23, 2012 IEP were not appropriate because the goals failed to address her behavioral, social and emotional needs, self-help/adaptive behaviors needs, as well as her inability to make and maintain relationships. The issue here is specific and is enough to put the District on notice as to the basis of Student's claims. Thus, this issue is also found to be sufficiently pled.

Issue Number 10. Student's Issue Number 10 alleges a denial of FAPE because the February 23, 2012 IEP failed to include appropriate related services and supports in that the IEP failed to include a behavior support plan to address Student's social, emotional and behavioral needs, or any services to address Student's self-help/adaptive behavior needs. The issue here is specific and adequate to put the District on notice as to the basis of Student's claims. Thus, this issue is found sufficiently pled.

Issue Number 11. In this issue, Student alleges that the District committed various procedural violations resulting in a loss of educational opportunity for Student. Specifically, the issue alleges that Student's grandparent was deprived meaningful participation in the development of Student's IEP because Student's grandparent was prevented from attending the IEP team meeting because the District was unwilling to work with Student's grandparent in scheduling the IEP team meeting. This issue is sufficiently pled, as it puts the District on notice as to the basis of Student's claims.

Issue Number 12. Student's Issue Number 12 alleges a denial of FAPE because the District violated the Hughes Bill by failing to provide her appropriate behavior support including a behavioral plan. Rather, Student further alleges, District was using "emergency interventions" as the sole behavior intervention contrary to the requirement of the Hughes Bill. This issue is sufficiently pled as it puts the District on notice as to the basis of Student's claims.

Issue Number 13, Issue Number 14, and Issue Number 15. Student's Issue Numbers 13 alleges that District discriminated Student on the basis of a disability by subjecting her to unreasonable restraints and discipline in violation of **title II of the American with Disability Act**. Likewise, Student's Issue Numbers 14 alleges that District discriminated Student on the basis of a disability by subjecting her to unreasonable restraints and discipline in violation of **Section 504 of The Rehabilitation Act of 1973**. Student's Issue Numbers 15 alleges that District violated the **Unruh Civil Rights Act** by subjecting Student to unreasonable restraints and discipline resulting in discrimination on the basis of a disability. For the purposes on IDEA, and as discussed in Student's complaint, Student's Issues

Numbers 13, 14 and 15 are sufficiently pled as they put the District on notice as to the basis of Student's claims.⁹

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 therefore meet the statutorily required standard of stating a resolution to the extent known and available at the time.

For the proposed resolutions, Student requests a finding from OAH that she was denied a FAPE from January 12, 2011 through February 22, 2012, and that the February 23, 2012 IEP denied Student a FAPE. Further, Student requests behavior intervention development services, a full-time certified one-to-one behavior specialist to provide behavior, social and emotional services and supports to Student, identified assessments and other identified appropriate services and supports, a behavior intervention plan, reimbursement for educational costs expended by Student's grandparent and an IEP to develop or update Student educational programs. Student also requests specific compensatory services, among other reliefs.

Thus, based on the forgoing discussion, Student's complaint is found to be sufficiently pled.

ORDER

1. Issues One through Fifteen of 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: April 2, 2012

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings

⁹ However, while these issues are sufficiently pled, they appear to be outside OAH's jurisdiction, and thus may be subject to dismissal upon an appropriate motion.