

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FRANKLIN MCKINLEY SCHOOL
DISTRICT AND SANTA CLARA
COUNTY OFFICE OF EDUCATION

OAH CASE NO. 2012040160

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On April 2, 2012, Carolyn Nedley, Attorney at Law, on behalf of Student (Student), filed a Due Process Hearing Request¹ (complaint) naming the Franklin McKinley School District (District) and the Santa Clara County Office Of Education (COED).

On April 16, 2012, Rodney L. Levin, Attorney for COED, filed a Notice of Insufficiency (NOI) as to Student's complaint.

On April 17, 2012, Deborah Ungar Ettinger, Attorney for District, also filed a Notice of Insufficiency (NOI) as to Student's complaint.

On April 19, 2012, Student filed a response to both NOIs.

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

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).

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 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 three issues for hearing regarding the District and COED’s denial of free appropriate public education (FAPE) to Student. The complaint includes two substantive issues, and one procedural allegation relating to his individualized education programs (IEPs), alleging that the IEPs failed to provide him with appropriate and adequate special education services to meet his unique needs. As discussed below, Student’s complaint is found sufficient.

Issue Number One. Student’s Issue Number One alleges that he is denied a FAPE during the 2009/2010, 2010-2011 and 2011-2012 school years (SYs), from at least April 2, 2010, because his IEPs: 1) failed to provide for adequate modification of homework assigned

³ 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

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).

to him;⁸ 2) failed to provide adequate behavioral support at home to assist Student with his homework; and 3) failed to coordinate Student's school-based and home-based Applied Behavior Analysis (ABA) services. Based on the alleged facts in the complaint and the specificity of the three sub-issue listed above, Student's Issue Number one is legally sufficient.⁹

Issue Number Two. Student's Issue Number Two alleges a denial of FAPE because District failed to conduct a Functional Behavior Assessment (FAA) and failed to provide an appropriate Behavior Intervention Plan (BIP) during the 2009/2010, 2010-2011 and 2011-2012 school years (SYs) and from at least April 2, 2010, despite Student's serious behavioral problems and documented disciplinary incidents involving Student. Again here, the issue raised here is specific enough to put the District and COED 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 a denial of FAPE based on two procedural violations. Specifically here, Student's alleges that he was denied a FAPE because District inappropriately failed to provide his parents with his "full and complete" educational records, and the required prior written notice when District *refused* to conduct the FAA requested by Parent.¹⁰ Therefore, this issue is also found to be sufficiently pled, as it puts the District on adequate notice regarding Student's claim.

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 appropriate placement in an autism private or non-public school setting; independent educational evaluations (IEEs) in the areas

⁸ Specifically, the complaint alleges that Student is being assigned homework that is beyond his current academic capacity.

⁹ This determination of sufficiency regarding Student's Issue Number One is limited to the three allegations/sub-issues identified herein, and as pled in the complaint with adequate supporting facts. If Student's Issue Number One intends to allege other allegations (sub-issues) not otherwise identified herein above, such other sub-issues are found to be insufficiently pled in Student's complaint. Student must file an amended complaint with sufficient facts to support such other or additional allegations or sub-issues.

¹⁰ Even though the complaint failed to provide a date when Parent requested the FAA, this omission does not make this issue insufficient. Rather, any dispute regarding when or whether the Parent requested an FAA is a question that could be supported with relevant evidence at the hearing.

of psychoeducational, mental health, and FAA; a BIP; appropriate community-based intervention services; compensatory education in the form of one-on-one academic instruction, one-on-one speech and language therapy, one-on-one occupational therapy, one-on-one counseling and a social skill program, each service to be provided by a non-public agency; coordinated ABA services at school and home; transportation support for all services including compensatory serves; and reimbursement for attorney's fees and other costs.

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

ORDER

1. Issues One through Three 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 27, 2012

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings