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. 2017040172 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On April 4, 2017, Student filed a Due Process Hearing Request[1] (complaint) naming the Torrance Unified School District. On April 19, 2017, Torrance filed a Notice of Insufficiency 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. (20 U.S.C. § 1415(b) & (c).) 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 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 to know how to prepare for the hearing and how to participate in resolution sessions and mediation. (See H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.)

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint." (Sen. Rep. No. 108-185, *supra*, at p. 34.) 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. (*Alexandra R. ex rel. Burke v. Brookline School Dist.* (D.N.H., Sept. 10, 2009,

[1] A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 U.S.C. section 1415(b)(7)(A).

CIV. 06-CV-0215-JL) 2009 WL 2957991[nonpub. opn.]; *Escambia County Bd. 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, 8:04CV2657T24EAJ) 2005 WL 2850076 [nonpub. opn.]; but cf. *M.S.-G v. Lenape Regional High School Dist. Bd. of Educ.* (3d Cir. 2009) 306 Fed.Appx. 772, 775 [nonpub. opn.].) Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge. (*Assistance to States for the Educ. of Children with Disabilities & Preschool Grants for Children with Disabilities* (Aug. 14, 2006) 71 FR 46,540-46541, 46699.)

DISCUSSION

Student's complaint alleges 25 claims, 21 of which are insufficient and 4 of which are sufficient. The claims are discussed below.

Allegations that are insufficiently pled

Claims 1, 8, 14 and 20

Student alleges in his first claim that the placement offered by Torrance in the individualized education program dated February 11 and February 18, 2014, "was not individualized to address Student's unique needs and did not constitute the least restrictive environment in which he could be successfully educated. In addition the classroom staff lacked adequate training and supervision." Student repeats that allegation verbatim in claims 8, 14 and 20, which relate to later IEP offers of February 3, 2015, February 2, 2016, and March 24, 2017. These allegations are insufficient to allow Torrance to prepare for a resolution session, mediation, or hearing because they only state legal conclusions; they do not set forth facts relating to the offered program, the allegedly required alternative, or the alleged shortcomings in staff training and supervision. Therefore, Student has failed to state sufficient facts supporting claims 1, 8, 14 and 20, and those claims are insufficient.

Claims 2, 9, 15 and 21

Student alleges in claim 2 that he was not offered appropriate behavioral services in the IEP of February 11 and February 18, 2014, in light of his history of maladaptive behaviors and social deficits. He repeats that allegation in claims 9, 15 and 21, which relate to the later IEP offers identified above. These allegations are insufficient to allow Torrance to prepare because they do not assert any facts that might put Torrance on notice why Student believes the undescribed behavior services offered, if any, were not "appropriate," a word that is essentially a legal conclusion. (See, e.g., 20 U.S.C. § 1401(9)(C); *Endrew F. v. Douglas County Sch. Dist. RE-1* (2017) 580 U.S. ___, 137 S.Ct. 988, 992, 994, 999.) Therefore, Student has failed to state sufficient facts supporting claims 2, 9, 15 and 21, and those claims are insufficient.

Claims 4, 11, 17 and 23

Student pleads in claim 4 that although he presents with severe communications deficits, he was not offered "appropriate" speech and language therapy in the IEP's of February 11 and 18, 2014. He repeats that allegation verbatim in issues 11, 17 and 23 in connection with the later IEP's. Because this is essentially a legal conclusion barren of any facts relating to the alleged deficiencies in the offers of speech and language services, if any, these claims are insufficiently pled. Therefore, Student has failed to state sufficient facts supporting claims 4, 11, 17 and 23, and those claims are insufficient.

Claims 5, 12, 18 and 24

Student pleads in claim 5 that, although he presents with severe communications deficits, he was not "assessed for and offered appropriate assistive technology services." He repeats that allegation verbatim in claims 12, 18, and 24, which relate to the later IEP's. Once again, Student's nearly exclusive reliance on the legal conclusion "appropriate" is inadequate to state facts relating to the problem, such as anything relating to the assistive technology services Student might need. In addition, Student's allegation is ambiguous because it conflates an assessment and an offer. It is not possible for Torrance to determine whether Student alleges that no assistive technology assessment was conducted, or whether there was some flaw in an assessment that was conducted. Therefore, Student has failed to state sufficient facts supporting claims 5, 12, 18 and 24, and those claims are insufficient.

Claims 6, 13, 19 and 25

Student pleads in claim 6 that Torrance "failed to develop and offer appropriate goals in all areas of need including, but not limited to, communication, behavior, social interaction, academics, and adaptive living skills." He repeats that allegation verbatim in claims 13, 19 and 25 in connection with the later IEP's. The allegation is insufficient because it rests almost entirely on the legal conclusion "appropriate," and does not identify facts relating to the alleged inadequacies in the goals, such as whether they stated inaccurate present levels of performance, were not measurable, or were insufficiently ambitious. (See *Endrew F. v. Douglas County Sch. Dist. RE-1, supra,* 137 S.Ct. at p. 1000.) In addition, the allegation can be read either to charge that inadequate goals were offered in the five named areas, or that no goals at all were offered in those areas. Therefore, Student has failed to state sufficient facts supporting claims 6, 13, 19 and 25 and those claims are insufficient.

Claim 7

Student alleges in claim 7 that, prior to the IEP team meeting of February 3, 2015, Torrance "failed to conduct an appropriate independent educational evaluation." Since districts do not conduct independent educational evaluations, this allegation is self-contradictory. In addition, Student does not allege whether he requested an independent evaluation, whether Torrance refused him one, the subject matter of the independent evaluation, or any other facts relating to the problem. Student also alleges in claim 7 that, on or about October 21, 2016, Parent became aware of the basis for disagreeing with the District's evaluation and "gave notice of same." This does not constitute an allegation that

Student requested an independent evaluation; it only alleges that Parent notified Torrance that she disagreed with an unidentified district assessment. Therefore, Student has failed to state sufficient facts supporting claim 7, and that claim is insufficient.

Allegations that are sufficiently pled

Claims 3, 10, 16 and 22

In claim 3 Student alleges that Torrance failed to implement the behavioral services in the IEP of February 11and 18, 2014. In Issues 10, 16 and 22 he repeats that allegation verbatim in connection with the later IEP's. Since Torrance will know what the behavioral services in those IEP's were, and whether Parent consented to them, these issues are sufficiently pled to put Torrance on notice as to the basis of Student's claims. Therefore, claims 3, 10, 16 and 22 are sufficiently pled.

ORDER

1. Claims 3, 10, 16 and 22 of Student's complaint are sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).

2. Claims 1, 2, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 23, 24 and 25 of Student's complaint are insufficiently pled under title 20 United States Code section 1415(c)(2)(D).

3. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).[2]

4. The amended complaint shall comply with the requirements of title 20 U.S.C. section 1415(b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on claims 3, 10, 16 and 22 of Student's complaint.

DATE: April 21, 2017

DocuSigned by:
Charles Marson
22945BBAD50448E...

CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings

[2] The filing of an amended complaint will restart the applicable timelines for a due process hearing.