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. 2013090293 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On September 10, 2013, Student filed a due process hearing request[1] (complaint) naming Torrance Unified School District (District).

On September 25, 2013, District filed a timely 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 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 alleges four claims, which are all insufficiently pled as discussed below.

Student's complaint alleges that he is a student with autism, but has some academic skills that would enable him to graduate with a regular high school diploma, if District would provide him with remedial academic instruction outside of the school day and allow him to remain in high school for more than four years. Student also alleges that running cross-country with the school's cross-country team members since 2012 increases his socialization skills, and that he needs a one-on-one aide to run with him to keep him safe. Student alleges that District has committed multiple violations of the IDEA since 2009, and alleges that multiple IEPs were inappropriate or improperly developed, including those dated May 17, 2009, December 17, 2009, December 13, 2010, October 12, 2011, May 18, 2012, December 5, 2012, May 16, 2013 and June 4, 2013. Student claims that District has denied him a free appropriate public education (FAPE) by: (1) failing to adequately assess Student prior to recommending a change in placement, (2) failing to offer Student individualized education programs (IEPs) with appropriate placement and services; (3) failing to offer Student

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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).

placement in the least restrictive environment (LRE), and (4) failing to provide Student with an aide for cross-country running.

Student's complaint is insufficiently pled in that it fails to provide District with the required notice of a description of the problem and the facts relating to the problem. It is impossible to determine from the pleading which IEPs or school years Student is including in his claims, and/or whether he is challenging the placement and services provided in some years, but not others. Although the reader may make educated guesses concerning the scope of each claim, such a guess is not the equivalent of "an awareness and understanding of the issues forming the basis of the complaint." For example, the claims allege that "the IEP" and "the placement" were not reasonably calculated to provide Student with educational benefit, and appear to be addressed at the May 16, 2013 and/or June 4, 2013 IEPs, due to references to Student's expert being prepared to criticize those IEPs, but the additional references within the claims to District's alleged improper conduct over multiple years renders them unintelligible.

Student's proposed resolutions are (i) that "until such time as a full educational evaluation is completed" he receive delineated services, such as an aide, remedial instruction, and "an appropriate combination of STEPS and Life Skills classes," and (ii) that Parents be reimbursed for privately obtained Lindamood-Bell services. It is unclear whether, or what, placement Student is seeking, or whether Student is seeking one or more assessments. 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 not well-defined, and therefore Student has not met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

ORDER

1. Student's complaint is insufficiently pled under section Title 20 United States Code 1415(c)(2)(D).

2. Student shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).[8]

3. The amended complaint shall comply with the requirements of Title 20 United States Code section 1415(b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.

4. If Student fails to file a timely amended complaint, the complaint will be dismissed.

5. All dates previously set in this matter are vacated.

Dated: September 26, 2013

/s/
ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings

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