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. 2017070917 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On July 24, 2017, Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming District. On August 2, 2017, District filed a Notice of Insufficiency as to the 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

[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).

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, 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.)

Student's 15-page complaint is insufficiently pled. Pages 1-6 are apparently background information pertaining to Student's disability, challenges, private therapies and historical placements, including a time period prior to and after she was determined to be eligible for special education and related services, and a parentally-funded private placement. It appears that these may not be at issue, however, because page 7 indicates that a settlement agreement was reached in January 2017. The complaint makes further observations concerning Student's subsequent challenges, lack of progress, and private practitioners' observations. Apparently at some point in the winter of 2017, as the complaint at page 7 states, Student was provided with Home Hospital services. It is not clear if these services are at issue. Further private clinician observations occurred in the Spring of 2017, as recounted on page 8, but it is not clear whether District's consideration of private assessments is at issue. A May 31, 2017 individualized educational program team meeting, described on page 9, apparently is at issue, and it appears to have made an offer of placement and services for the 2017-18 school year with which Student disagrees. However the single Issue pled, beginning at page 11, does not clarify what about the offer was deficient. It broadly states that District denied Student a free appropriate public education by failing to offer appropriate "placement and services," and "academic interventions." Extended school year allegations appear on page 13, with no indication whether an offer of ESY was or was not made, or is being challenged. Finally, the complaint concludes with a challenge to the reading program District utilized.

The complaint does not provide enough information because it does not provide the reader with "an awareness and understanding of the issues forming the basis of the complaint." The complaint should separate historical information that is stated for background only, and should clarify what time frame is at issue. It should clearly delineate whatever assessments, eligibility determinations, or any procedural violations that may be being challenged. Finally, it should state when IEP meetings were held, what offers of placement and services were made, and in what manner the offers were deficient.

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).[2]

3. 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.

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.

DATE: August 7, 2017

DocuSigned by:
June Lehrman
36F2B3D2671E4C8...

JUNE R. LEHRMAN
Presiding Administrative Law Judge
Office of Administrative Hearings

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