BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017040554
v.	ORDER FINDING ISSUE 2 OF STUDENT'S COMPLAINT SUFFICIENT, AND FINDING ISSUES 1 AND 3 INSUFFICIENT
TORRANCE UNIFIED SCHOOL DISTRICT.	

On April 10, 2017, Student filed a due process hearing request[1] (complaint) with the Office of Administrative Hearings naming Torrance Unified School District. On April 24, 2017, District filed a notice of insufficiency as to Student's complaint. On April 26, 2017, Student filed an opposition.

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.)

DISCUSSION

Student's complaint alleges three claims, some of which are sufficient and some which are insufficient. The issues are discussed below.

Student's complaint alleges that despite severe attention deficits and academic struggles since first grade, and a psychoeducational assessment in June 2014, District did not find Student eligible for special education and related services until December 6, 2016. Student identifies her issues as: (1) whether District denied Student a FAPE "since the Spring 2014-2016 semester," (2) whether the December 2016 individualized education program denied Student a FAPE, and (3) whether Student is entitled to compensatory education from January 2016 forward.

The use of the term "Spring 2014-2016 semester" in the first issue is vague and confusing, and does not provide enough information for District to be aware of or understand that issue. In her opposition, Student argues that the District can refer to the statute of limitations to determine the beginning of this claim, and can determine the end date by speculating that the reference to 2016 must refer to one of the 2016 semesters. Student further asserts that she was referring to the semester ending in 2016, but does not specify whether she is referring to a Spring or Fall semester ending in 2016. Additionally, Student's third claim seeks compensatory education from January 2016, a month typically in the 2015-2016 school year, raising further ambiguity about her reference to a 2014 "semester." This claim is insufficient. Student can readily put District on notice of the period of her claims by amending her complaint to add references to specific school years or calendar dates.

As to the second claim, Student alleges that she has only had one IEP offering her a FAPE. Therefore, the claim must refer to the December 6, 2016 IEP, and is sufficient to place District on notice that her second claim challenges whether that IEP offers her a FAPE.

The third claim is not more than a request for remedies, and therefore fails to provide a description of the nature of a 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. Therefore, it is insufficient.

ORDER

1. Issue 2 of the complaint is sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).

2. Issues 1 and 3 of the 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 Issue 2 of Student's complaint.

DATE: April 26, 2017

DocuSigned by:
Alexa Hohensee
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ALEXA HOHENSEE
Administrative Law Judge
Office of Administrative Hearings

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