BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. TORRANCE UNIFIED SCHOOL DISTRICT.	OAH Case No. 2016100625 DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On October 7, 2016, Parents on behalf of Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming the Torrance Unified School District. On October 18, Torrance Unified timely 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,

[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).

supra, at p. 34.) The pleading requirements should be liberally construed in light of the broad remedial purposes of the Individuals with Disabilities Education Act 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.)

Additionally, 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).)

DISCUSSION

Under the legal standards stated above, some of the issues in Student's complaint are insufficient as pled. As stated below, "Complaint 1" of Student's complaint and part of the issues in Student's "Complaint 4" are sufficient to put Torrance Unified on notice of what Student contends are violations of her rights under the IDEA.

Although Student's Complaint 1 is somewhat convoluted, the essence of the complaint is that Torrance Unified improperly exited Student from special education in September of 2013. That allegation is sufficient to put Torrance Unified on notice of Student's contentions and give it an opportunity to respond to the complaint, participate in a resolution and mediation session, and defend the allegations, if necessary, at hearing. While Student's Complaint 1 also includes allegations outside the statute of limitations, and allegations that Torrance Unified violated Student's rights under the Americans with Disabilities Act, addressing those allegations should be done in the context of a motion to dismiss. For these reasons, Complaint 1 is sufficient as pled.

In Complaint 2, Students states that she enrolled in another school district on or about December 10, 2014. That district assessed Student and found her eligible for special education and related services. Student then states that she required home hospital instruction on or about November 1, 2015. However, there are no specific allegations as to Torrance Unified other than Student's request that Torrance Unified provide her with compensatory education. It is unclear as to what exactly Student alleges Torrance Unified did or failed to do within the context of the allegations in Complaint 2, and when exactly that might have occurred. For these reasons Complaint 2 is insufficient as presently pled.

In Complaint 3, Student alleges that she re-enrolled in Torrance Unified on or about November 10, 2015. It is unclear exactly what Student then alleges in Complaint 3. She

states that six months after enrollment, Torrance Unified requested copies of her records, including her individualized education program, from her prior school district. Student then contends that Torrance Unified had the records or should have had the records. Student then states that Torrance Unified did not provide her with special education services upon her re-enrollment. However, Student fails to state when she gave Torrance Unified notice she intended to re-enroll, when she provided it with a copy of her IEP from her prior school district, and what, if anything, were the communications between Student's parents and Torrance Unified for the six months subsequent to November 1, 2015. The allegations of Complaint 3 fail to put Torrance Unified on notice of the facts supporting Student's contentions. For these reasons, Complaint 3 is insufficient as pled.

In Complaint 4, Student states that Torrance Unified began providing her with general education services on or about February 10, 2016, under a home hospital program, but that it refused to provide Student with the services noted in her current IEP. Student contends that Torrance Unified should have provided her with speech and language and occupational therapy services. Student also contends that on or about April 15, 2016, Parents requested a copy of Student's file, but that Torrance Unified did not provide it. These portions of Complaint 4 are sufficient as pled to put Torrance Unified under notice of the allegations Student raises against it.

In Complaint 4, Student also contends that she has a right to information regarding the professional qualifications of her teachers and paraprofessionals. Student fails to state if and when Parents requested this information, and how, if it was not provided, it violates her rights under the IDEA. Student also contends that on or about November 20, 2015, her parents requested Torrance Unified provide Student with special education support. Student fails to state what type of support Parents requested and why Student required that support. For these reasons, these two allegations of Complaint 4 are insufficient as pled.

In Complaint 5, Student contends that she returned to school on or about September 8, 2016, but that Torrance Unified failed to provide her with a free appropriate public education after that time. Student fails to state in what manner Torrance Unified failed to do so. Student fails to give any information in this issue that would put Torrance Unified under notice of the allegations against it. For these reasons, Complaint 5 is insufficient as pled.

To the extent that Student's proposed resolutions to her complaint request an order that Torrance Unified comply with the Americans with Disabilities Act, that request is beyond the jurisdiction of OAH. Student's request for compensatory education, for additional support, and for Torrance Unified to comply with Parents' request for documents, meet the minimal standards for resolutions stated in the IDEA, and are sufficiently pled.

MEDIATOR ASSISTANCE FOR NON-REPRESENTED PARENTS

A parent who is not represented by an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be

included in a complaint. (Ed. Code, § 56505.) Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

ORDER

1. Complaint 1 and part of Complaint 4 of Student's complaint are sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).

2. Complaints 2, 3, part of 4, and 5, 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 as to Complaint 1 and only on that part of Complaint 4 of Student's complaint that alleges Torrance Unified failed to provide her with the services noted in her current IEP on or after February 10, 2016, and that Torrance Unified failed to provide Parents with a copy of Student's file when they requested it.

DATE: October 24, 2016

DocuSigned by:
Darrell Lepkowsky
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DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings

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