BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. TORRANCE UNIFIED SCHOOL DISTRICT,	OAH Case No. 2017040884
TORRANCE UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2017040927 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On April 18, 2017, Student filed a due process hearing request[1] (complaint) with the Office of Administrative Hearings naming Torrance Unified School District. On May 3, 2017, Torrance Unified School District filed a notice of insufficiency as to several issues in 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

[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).

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, 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 contains eight issues. Torrance alleges that Issues 2, 6, 7, and 8 are insufficiently pled.

Issue 2 claims that "it became clear that Student was not making progress after an SST on 4/14/15," and that Torrance "fail[ed] to consistently implement an SST plan and take data" which resulted in a denial of a FAPE to Student. This is an allegation that Student was denied a FAPE because the SST plan was not implemented. Whether OAH has jurisdiction to decide this is not the subject of a notice of insufficiency. Accordingly, Issue 2 is sufficiently pled.

Issue 6 alleges that after the initial IEP team meeting on November 16, 2015, six "Addendum meetings" were held, and Student was denied a FAPE because Torrance failed to provide him with "meaningful behavior intervention services . . . . and fail[ed] to provide Parents with accurate, measurable and meaningful data about Student's progress or lack thereof." This issue is understood to mean that Student was denied a FAPE because behavior intervention services did not meet his unique needs, and were therefore ineffective, and that Torrance failed to provide Parents with data concerning these services. The last sentence of the Issue that gives the dates of the addendum meetings in 2016, does not mean this issue is insufficiently pled. Issue 6 is sufficient as pled.

Issue 7 alleges a denial of a FAPE because Torrance did not provide Student with placement in an NPS following Parents' request for that placement in 2016 and 2017. Torrance claims that it did not understand when this request was made because there were so

many IEP team meetings in 2016. However, Torrance has copies of all the IEP's as well as access to school staff who attended the meetings. It is clear that Student is alleging that he was denied a FAPE during the time period at issue because Torrance did not place him in a nonpublic school as requested by Parents. The issue is sufficiently pled.

Issue 8 questions whether an IEP offer of February 21, 2017, is an offer of a FAPE. On page 6 of Student's complaint, he reiterates his need for a nonpublic school, which has not been offered by Torrance in that IEP. Accordingly, this issue is sufficiently pled.

Issues 1through 8 are sufficiently pled to put Torrance on notice as to the basis of Student's claims. The matter shall proceed as currently scheduled.

ORDER

1. all of the Issues in Student's complaint are sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).

2. The matter shall proceed as currently scheduled.

DATE: May 10, 2017

DocuSigned by:
Rebecca Freie
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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings