BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. TORRANCE UNIFIED SCHOOL DISTRICT AND LOS ANGELES COUNTY OFFICE OF EDUCATION.	OAH Case No. 2017040583 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On April 11, 2017, filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming Torrance Unified School District and Los Angeles County Office of Education. On April 26, 2017, Torrance 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.) Subject to limited exceptions, a request for a due process hearing must be filed within two years from the date the party initiating the request knew or had

[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).

reason to know of the facts underlying the basis for the request. (20 U.S.C. § 1415(f)(3)(C), (D).)

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 alleges nine claims in the complaint, six of which are insufficiently pled as discussed below.

Issues 4, 5 and 8 are sufficiently pled to put Torrance and the County Office of Education on notice as to the basis of Student's claims. However, issues 1, 2, 3, 6, 7, and 9 of Student's complaint are insufficiently pled in that they fail to provide Torrance or the Los Angeles County office of Education with sufficient detail to determine the time of claims and in some cases the substance of the claims being made. The lack of detail is made more difficult by the fact that the complaint includes facts going back to 2009. In light of the fact that IDEA contains a two-year statute of limitations, if Student is making claims that date back to 2009, Respondents are entitled to clear notice of that so they are able to make whatever motions they deem appropriate.

Student's issue No. 1 is stated as follows: "Did the Respondents fail to provide Student a free appropriate public education (FAPE) by failing to offer an appropriate placement with sufficient services to provide an educational benefit?" This issue fails to provide any detail as to what time frame is at issue. It is also compound without specificity. As Student has included facts in the complaint that predate the statute of limitations, the responding parties have no means of knowing when Student is claiming an appropriate placement was not offered. Respondents are also in the dark as to what services provided Student claims were insufficient. Absent these details, this claim is insufficient to provide adequate notice to the opposing parties.

Student's issue No. 2 is stated as follows: "Did the Respondents deny Student a FAPE by failing to address her unique needs by developing appropriate goals and objectives?" Similarly to issue No. 1, Student has failed to designate the date of the IEP in

question. Student has also failed to designate what goals or objectives were missing, or to differentiate between goals that were missing entirely and goals that were written but were allegedly inadequate. Therefore, Student has failed to state sufficient facts supporting this claim, and the claim is insufficient.

Student's issue No. 3 is stated as follows: "Did the Respondents deny Student a FAPE by failing to implement her IEP." Other than designating a failure to implement Student's toileting schedule, Student has not identified any other services or other provisions of the IEP she is claiming were not implemented. Student has also failed to identify which IEPs over the 8-year period the complaint addresses that she is claiming were not implemented. Without this information, the claim is insufficient.

Student's issue No. 6 is stated as follows: "Did the Respondents deny Student a FAPE by failing to provide her with a classroom environment (relating to classroom size, physical amenities and necessary equipment) that would meet her unique needs." Student fails to identify the dates of the IEP's for which placement was inadequate. Absent these details, this claim is insufficient.

Student's issue No. 7 is stated as follows: "Did the Respondents deny Student a FAPE by failing to provide additional technology equipment?" Student has failed to identify which IEP's failed to include the technology Student allegedly required, or what the additional equipment might be. Without these details, the claim insufficient.

Student's issue No. 9 is stated as follows: "Did the Respondents deny Student a FAPE and is Student therefore entitled to compensatory education." This issue fails to provide any specificity as to when Student was denied a FAPE or on what basis. If this is a claim for compensatory education, it should be stated as a proposed resolution.

ORDER

1. Issues 4, 5, and 8, of Student's complaint are sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).

2. Issues 1, 2, 3, 6, 7, and 9, 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.

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

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues 4, 5, and 8 of Student's complaint.

DATE: May 1, 2017

DocuSigned by:
Penelope S. Pahl
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PENELOPE S. PAHL
Administrative Law Judge
Office of Administrative Hearings