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. 2013071248 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On July 30, 2013, Bruce Bothwell, Attorney at Law, filed a Due Process Hearing Request[1] (complaint) on behalf of Student with the Office of Administrative Hearings (OAH) naming Torrance Unified School District (District).

On August 9, 2013, Sharon A. Watt, Attorney at Law, timely filed a Notice of Insufficiency (NOI) on behalf of the District 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.[2] 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 (FAPE) 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.[3] These

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[1] A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 United States Code section 1415(b)(7)(A).

[2] 20 U.S.C. § 1415(b) & (c).

[3] 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

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.[4]

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint."[5] 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.[6] Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.[7]

DISCUSSION

Student identifies ten issues in the complaint, some of which are sufficient and some which are insufficient. Issues One and Three through Eight are sufficiently pled to put the District on notice as to the basis of Student's claims. Issues Two, Nine and Ten are insufficiently pled, but Student will be given an opportunity to amend his complaint. All issues are discussed below.

Issue Found Sufficient

In Issue One, Student alleges that the District failed in its child find obligations from July 30, 2011, to January 29, 2013. Although brief, this issue does identify the nature of the alleged problem and when read in conjunction with the entire complaint provides sufficient related facts to permit the District to respond to the complaint and participate in a resolution session and mediation.

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[4] See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

[5] Sen. Rep. No. 108-185, *supra*, at p. 34.

[6] *Alexandra R. v. Brookline School Dist*. (D.N.H., Sept. 10, 2009, No. 06-cv-0215-JL) 2009 WL 2957991 at p.3 [nonpub. opn.]; *Escambia County Board 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, No. 8:04CV2657T24EAJ) 2005 WL 2850076 at p. 3[nonpub. opn.] ; but cf. *M.S.-G. v. Lenape Regional High School Dist.* (3d Cir. 2009) 306 Fed.Appx. 772, at p. 3[nonpub. opn.].

[7] Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed.Reg. 46540-46541, 46699 (Aug. 14, 2006).

In Issue Three, Student alleges that the District denied him a FAPE at the individualized education program (IEP) team meeting held on December 1, 2011, by failing to find him eligible for special education and failing to address his unique needs as a child with autism. This issue is sufficiently pled.

Student alleges in Issues Four and Five that the District denied him a FAPE at the IEP team meetings in January 2013, by failing to offer behavior support or therapy to address his deficits in behavior, socialization and attention, and in failing to offer any goals to address Student's deficits in these three areas. The facts alleged are sufficient to put the District on notice of the nature of these problems.

In Issue Six, Student claims that the District, subsequent to the January 2013 IEP team meetings, violated his procedural rights and denied Parent the opportunity to meaningfully participate in the decision making process when it failed to allow him an opportunity to observe his current placement as part of a privately funded independent educational evaluation (IEE). This claim is sufficient as pled. More specificity as to when Student requested the opportunity to observe and when the alleged denial occurred can be provided at the prehearing conference (PHC).

Issues Seven and Eight allege deficiencies in the District's May 2013 amendment IEP offers. In Issue Seven, Student alleges that the District denied him a FAPE at the May 6, 2013 amendment IEP meeting by offering inadequate "ASSISTT" services and inadequate behavior supports, including only 30 minutes per week of playground support and 60 minutes per month of behavior consultation. In Issue Eight, Student alleges that the behavior support plan (BSP) offered at the May 30, 2013 team meeting was inappropriate in that it failed to identify antecedents and consequences to Student's behavior, did not address all behavior deficits, did not offer effective strategies, and that the staff members who would implement and supervise the BSP were not sufficiently trained. The issues can be further clarified at the PHC, however, these issues provide sufficient related facts to enable the District to understand the nature of the complaint and to prepare for and participate in a resolution and mediation session.

Issues Deemed Insufficient

With regard to Issues Two and Ten, Student fails to allege sufficient related facts. Student alleges in Issues Two and Ten that the District failed to assess him in all areas of suspected disability prior to the December 1, 2011, and January 8, 2013 IEP team meetings. Student does not identify in what areas of suspected disability the District was required to and failed to assess and what basis of knowledge the District had to alert it that these were areas of need. Therefore, Student has failed to state sufficient facts supporting these claims, and Issues Two and Ten are insufficient.

Finally, Student's Issue Nine does not provide the District with any related facts to place it on notice of the nature of the issue. Issue Nine states that the educational program offered by the District was not scientifically based upon peer -reviewed research. Student

fails to identify what educational program was offered, at which IEP team meeting, what type research-based program Student required, and in what manner the District's program was deficient. Therefore, Issue Nine is insufficiently pled.

Proposed Resolutions

Student's proposed resolutions request: 1) during recess, lunch and unstructured social settings, a behavior trained one-on-one therapist supervised by a nonpublic agency experienced in working with autistic children; 15 hours per week of home based behavior therapy; compensatory behavior therapy and reimbursement for privately funded behavior therapy; 2) reimbursement for privately funded speech and language therapy and compensatory speech and language services; 3) reimbursement for privately funded occupational therapy and compensatory occupational therapy; and 4) reimbursement for the IEE by Dr. Robin Morris.

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).) Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

ORDER

1. Issues One, and Three through Eight of Student's complaint are sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).

2. Issues Two, Nine, and Ten 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).[8]

4. The amended complaint shall comply with the requirements of title 20 United States Code section 1415 (b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.

[8] 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 One, and Three through Eight in Student's complaint.

Dated: August 12, 2013

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings