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. 2013050386 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On May 9, 2013, Parents, on behalf of Student, filed a Due Process Hearing Request[1] (complaint) naming Torrance Unified School District (District). On May 24, 2013, District filed a Notice of Insufficiency (NOI) 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 requirements prevent vague and confusing complaints, and promote fairness by providing the

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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).

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 (IDEA) 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 alleges eight claims in the complaint, one with four subissues. Some of these are sufficient, and some are insufficient. The issues are discussed below.

Student's complaint is 43 pages in length, double spaced. The first 26 pages contain a recitation of facts, under headings that correlate with specific school years beginning with the 2010-2011 school year (SY), and continuing through 2012-2013 SY.[8] Each school year section contains subheadings followed by either factual allegations, or conclusory statements that are unsupported by facts, that appear to be related to possible legal issues. There are

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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).

[8] There is a two-year statute of limitations for the filing of claims pursuant to the IDEA. (Ed. Code § 56505, subd. (l).) No finding is made in this order as to whether Student has sufficiently plead facts that would create an exception to this two-year statute of limitations. This issue may be addressed through a motion to dismiss claims beyond the statute of limitations.

multiple quotes from school records and Parent and teacher correspondence under some of the headings.

Beginning on page 27, Student then has a section entitled "Legal Allegations," which then lists apparent issues. Issue A alleges that the District denied Student a FAPE by failing to assess him in all areas of suspected disability. This is followed by subheadings relating to various areas where Student claims he should have been assessed.

The first subheading under issue A, number 1, is "Behavior." Following this is what appears to be sub-subheadings entitled "a. [District failed to conduct an FAA [functional analysis assessment] . . . ," and "b. [District] failed to conduct an independent behavior assessment upon Mother's request."[9] The first section of the complaint contains many pages quoting behavior reports from the school years placed at issue, as well as the date Mother requested an independent behavior assessment, May 1, 2012. Accordingly, subissue A 1 is found to be sufficiently pled.

Following subissue A 1, under the Legal Allegations section is subissue A 2, entitled "Cognition, ADHD [attention deficit hyperactivity disorder], SLD [specific learning disability]." Student claims that a psychoeducational assessment dated November 11, 2011, is inadequate because it did not meet purported legal requirements for such an assessment. However, there appears to be no tie-in to any specific factual allegations that would support an issue that cognition, ADHD, or SLD were in fact suspected disabilities and were not assessed. The District should not be required to go through the 26-page first section of the complaint line by line to determine whether there are supporting factual allegations for this claim. (*Student v. Valley Center Union School District* (February 18, 2009) Cal.Ofc.Admin.Hrngs. Case No. 2009010785.) Accordingly, subissue A 2 is insufficiently plead.

Subissue A 3 claims that the District's May 5, 2011 speech and language assessment is inadequate because it was not conducted in Student's "primary language," and utilized "an informal test, which involved an observation and a questionnaire to his parents." To the extent that Student is claiming the speech and language assessment did not meet legal requirements, and therefore he is entitled to an independent assessment in this area, subissue A 3 is sufficiently pled.

Subissue A 4 questions "AT [assistive technology]/AAC [assessment for augmentative communication]" assessments. Parent disagrees with these assessments, and facts are provided that establish a basis for the disagreement. Accordingly, subissue A 4 is sufficiently pled.

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[9] Student's issue headings are in an approximation of "title" case. In presenting these headings, title case is not used.

Issue B claims that from May 2011 though the present, Student was denied a FAPE because the District did not provide him with "appropriate" AT/AAC services. The facts that follow the statement of Issue B again are based on Parents disagreement with the AT/AAC assessments, as well as some allegations that various recommended devices may not have been used, i.e., that the District failed to implement Student's IEP in this regard. Issue B is sufficiently pled.

Issue C claims that the District denied Student a FAPE from at least May 2011 through the present, because it did not provide him with "a trained one-to-one aide or prior written notice" to explain why the District refused to comply with Parental requests for such an aide. As previously noted, the complaint contains many, many pages in the first section concerning Student's behavioral issues, as well as Parental requests for such an aide, and the dates of these requests. Issue C is sufficiently pled.

Issue D claims that the District failed to offer Student an appropriate placement. Facts are asserted that purportedly support this claim, such as his failure to meet his goals, low marks on report cards, and failure to make progress in communication. However, no time period is alleged, and because the complaint asserts that three separate school years are at issue (some before the statute of limitations began), it is unclear which school years are at issue. Further, it is unclear what type of placement the District should have offered Student, or why its placements for these years were not appropriate. The District should not be required to go through the first 26 pages of the complaint line by line to make a determination of what, if any facts support this claim. Accordingly, Issue D is insufficiently pled.

Issue E claims that the District denied Student a FAPE from May 2011 to the present, because it failed to provide "adequate services" to Student. Many of the same facts asserted for Issue D are asserted here. It is difficult to ascertain what sort of services Student should have received that he did not, or whether the issue is a failure to implement the IEP. Again, the District is not required to put the complaint under a microscope to determine whether the first section contains adequate facts, if any, to support this claims. Accordingly, issue E is insufficiently pled.

Issue F is an assertion that Student was denied a FAPE from May 2011 to the present because he was not provided with goals to meet his unique needs. Student claims that this failure was due to the District's purportedly inadequate assessments, and the fact that he did not meet his goals during this time period. However, these bare allegations are not sufficient to support this claim. The legal requirements for goals that are spelled out in Education Code section 56345, subdivision (a) (2) are not referred to, nor is there anywhere in the complaint a statement of what Student's goals were for each of the school years referred to here, and why they did not meet these legal requirements. Accordingly, issue F is insufficiently pled.

Issue G asserts that Student was denied a FAPE because the District failed to use a picture exchange communication system (PECS) that was recommended in a 2010 AT/AAC

report. It is unclear whether this was ever a component of his IEP. Accordingly, this issue is insufficiently pled.

Issue H is a claim that from May 2011 through the present Student was denied a FAPE because the District did not address socialization issues. It is unclear in reading the assertions contained below this issue as to how the District should have addressed socialization issues for Student, whether any goals or services were ever written into any of his IEP's, and if so, when and what they were. Again, the District should not be forced to read the first 26 pages of the complaint to determine if sufficient facts are contained there to support this allegation. Accordingly, issue H is insufficiently pled.

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).) The District claims the proposed resolutions stated in Student's complaint are insufficiently pled, but does not state why. However, Student's proposed resolutions are well-defined, and met the statutorily required standard of stating a resolution to the extent known and available to him at the time of the filing of the complaint.

Subissues A 1, A 3, and A 4, and issues B and C are sufficiently pled to put the District on notice as to the basis of Student's claims in this regard, and to provide the District with sufficient information to engage in a meaningful resolution session and mediation, and to defend against these claims.

Subissues A 2, D, E, F, G, and H are insufficiently pled because Student has failed to state sufficient facts supporting these claims. With insufficient facts, the District cannot adequately prepare for a resolution session, mediation or a due process hearing.

ORDER

1. Issues A 1, A 3, A 4, B and C of Student's complaint are sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).

2. Issues A 2, D, E, F, G, and H 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).[10]

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

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.

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues A 1, A 3, A 4, B and C in his complaint.

Dated: May 29, 2013

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings