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. 2017011174 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On January 31, 2017, Student filed a due process hearing request[1] (complaint) with the Office of Administrative Hearings naming Torrance Unified School District. On February 14, 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.)

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 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

In its notice of insufficiency, Torrance generally claims that all of the issues and proposed resolutions are insufficiently pled. However, it specifically claims that Student's fifth issue is insufficiently pled because it cannot be determined which time period it covers.[2] Student's 20-page complaint alleges five claims, and all are sufficiently pled.

Issue One contains two sub-issues and alleges that Torrance denied Parents meaningful participation in the individualized education program development process by "[d]etermining the offer of placement . . . in his October 5, 2015 individualized education program, outside of the IEP meeting" (predetermination), and "[f]ailing to make a formal written offer of a FAPE which specifically and accurately described [his] proposed placement" at the same IEP team meeting. Previous paragraphs in the complaint contain facts which, if found to be true, would support this claim. Thus, this issue is sufficiently pled to put Torrance on notice as to the basis of this claim.

Issue Two alleges that Student was denied a FAPE in an IEP dated October 9, 2014, and contains five sub-issues.[3] The first two sub-issues claim Torrance failed to include goals in the areas of sight words, spelling, capitalization, and punctuation, and that the IEP contained an "inappropriate" writing goal. The third sub-issue alleges that the IEP "provided 'De minimus benefit'" in the areas of reading and writing. The fourth sub-issue claims the IEP did not provide Student with "sufficient support" in the areas of behavior and attention. The fifth sub-issue claims that the IEP did not provide Student "an aide with advanced

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[2] The paragraph following this claim does not appear to pertain to the complaint in this case, since it refers to some sort of printout of an appointment book, and there is nothing about this in Student's complaint.

[3] In the complaint Student claims that he and Torrance previously entered into a stipulation that he can make claims that preceded the two-year statute of limitations for special education due process hearing requests found in Education Code section 56505(l).

behavioral training." Previous paragraphs in the complaint contain facts which, if found to be true, would support this claim. Thus, this issue is sufficiently pled to put Torrance on notice as to the basis of Student's claim.

Issue Three claims that Torrance denied Student a FAPE in the October 5, 2015 IEP, and contains three sub-issues. The first sub-issue alleges that the IEP failed to include goals in the areas of sight words, spelling, capitalization, and punctuation. The second sub-issue claims that the IEP provided insufficient support related to Student's behavior and attention. The third sub-issue claims that Torrance did not provide Student with an aide who had "advanced behavioral training." Again, the complaint contains facts which, if found to be true, would support each sub-issue. Thus, this issue is sufficiently pled to put Torrance on notice as to the basis of this claim.

Issue Four claims that Torrance denied Student a FAPE in an IEP dated January 17, 2017, and contains two sub-issues. The first is that Torrance did not provide Student with a reading program recommended by an independent educational evaluator. The second sub-issue alleges that the IEP did not provide Student with an aide trained in applied behavior analysis. Again, the complaint contains facts which, if found to be true, would support each sub-issue. Thus, this issue is sufficiently pled to put Torrance on notice as to the basis of this claim.

With regard to Issue Five, Student claims that Torrance denied him a FAPE because it failed to assess him in the areas of assistive technology and functional behavior. Although no time period is stated, the complaint makes reference to an independent educational evaluation by Dr. Robert Patterson that was completed in August 2016, in which Dr. Patterson recommended that an assistive technology assessment be conducted. It is reasonable to infer that this assessment should have been conducted during the time period covered by the complaint, beginning with an IEP developed in the 2014-2015 school year.[4] Further, the complaint is replete with references to Student's "inattentive and off-task behaviors" throughout the time period covered by the complaint. Thus, this issue is sufficiently pled to put Torrance on notice as to the basis of this claim.

Student's proposed resolutions ask for continued placement in a general education classroom, and funding for an applied behavior analysis-trained aide provided by a nonpublic agency. He also asks for independent educational evaluations in the areas of assistive technology and functional behavior. In addition he asks that Torrance reimburse Parents for previous expenditures to provide Student with services from Lindamood Bell, or funding for a specific Lindamood Bell program in the future. Finally, he also asks for attorney fees and costs, and any other relief deemed proper. 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 proposed resolutions stated in Student's complaint are

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[4] As previously noted, student claims the parties have agreed to extend the two-year statute of limitations.

well-defined, and he 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, Two, Three, and Four of Student's complaint are sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).

2. All dates for mediation, prehearing conference and due process hearing are confirmed.

DATE: February 17, 2017

DocuSigned by:

Rebecca Freie

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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings