BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. TORRANCE UNIFIED SCHOOL DISTRICT AND PALOS VERDES PENINSULA UNIFIED SCHOOL DISTRICT.	OAH Case No. 2016090165 ORDER DETERMINING DUE PROCESS COMPLAINT TO BE PARTIALLY INSUFFICIENT

On September 2, 2016, Student filed a Due Process Hearing Request[1] (complaint) naming Torrance Unified School District and Palos Verdes Peninsula Unified School District. On September 13, 2016, Torrance filed a notice of insufficiency as to portions of 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.)

[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).

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

Torrance raises four primary contentions regarding the complaint's sufficiency. In Issue 4, Student claims that Torrance and Palos Verdes failed to conduct an auditory processing assessment of Student. Torrance contends that it cannot determine whether Student alleges that Torrance "should have assessed for the lower order and basic psychological function of central auditory processing, or whether [Student] alleges that [Torrance] should have assessed the higher-level function of processing auditory input that is correctly perceived." The complaint, however, describes the nature of the problem — Torrance and Palos Verdes failed to conduct an auditory processing assessment of Student. The complaint contains numerous facts regarding a suspicion that Student had a need in the area of auditory processing, and documenting Parents' requests for Student to receive an auditory processing assessment. The issue as pled is deemed sufficient.

In Issue 12 of the complaint, Student claims Palos Verdes failed to provide prior written notice of its denials to evaluate Student for needs relating to auditory processing, and Student provides numerous facts in support of this issue. Later in the complaint, Student concludes that as a result of Torrance's failure to provide prior written notice, Student has not received a free appropriate public education an any time pertinent hereto in that the legal violations impeded his right to a FAPE, significantly impeded Parents' opportunity to participate in the decision-making process concerning the provision of a FAPE to Student and deprived Student of any educational benefit. Torrance contends that this issue is insufficiently pled because it cannot determine which local educational agency Student claims is subject to the allegation regarding prior written notice. Therefore, this issue, Torrance claims, lacks the specificity necessary to give it awareness and understanding of the

facts forming the basis of the complaint.[2] The facts alleged in the complaint relate to Palos Verdes' failure to provide written notice relating to its denials to evaluate Student for auditory processing, not Torrance. Accordingly, this issue as pled is deemed insufficient.

Finally, Torrance contends Student's requests that he be provided an individualized education program and an individual service plan as partial resolution of the complaint is concerning because one is mutually exclusive of the other. Further, Torrance contends it cannot determine whether Student is requesting placement at a private or public school in his proposed resolutions. 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).) Torrance fails to cite any law that prohibits a party from seeking alternative resolutions, such as an IEP or an ISP. The complaint does not indicate that Student is seeking both an IEP and ISP. It is true that Student requests Torrance provide a placement appropriate to his needs without specifying the specific placement he is seeking. However, Student is only required to provide a proposed resolution to each identified problem to the extent known at the time of filing. The proposed resolutions are well-defined. Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

ORDER

1. Issue 4of Student's complaint is sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).

2. Issue 12 of Student's complaint is 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).[3]

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.

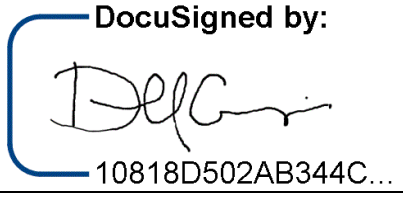
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[2] Although Student does allege that both districts were responsible for assessing him in the area of auditory processing, the facts supporting his prior written notice issue relates solely to Palos Verdes.

[3] 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 on all issues alleged in the complaint, except Issue 12.

DATE: September 16, 2016



DENA COGGINS
Administrative Law Judge
Office of Administrative Hearings