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. 2013060965 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On June 24, 2013, Parent on behalf of Student filed a due process hearing request[1] (complaint) naming the Torrance Unified School District (District) and the Los Angeles County Office of Education (LACOE).

On July 5, 2013, LACOE timely 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

[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 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's complaint alleges that Student is in twelfth grade and currently eligible for special education under the categories of severe learning discrepancy (SLD) and speech and language impairment (SLI). The complaint alleges that despite Student's history of marijuana use, truancy, maladaptive behaviors and suspensions throughout high school, District failed to assess Student for social/emotional problems and offer or provide a program to address Student's emotional distress related behaviors, and Parent was ultimately required to unilaterally place Student in a residential treatment center (RTC) in Utah in April 2012 to address those behaviors. When Student returned for the 2012-2013 school year, District allegedly placed him in the same inappropriate classroom at a District high school without supports, before moving him to a LACOE run program at another site on September 27, 2012 without an individualized education program (IEP) team meeting, which program Student "ditched" almost every day. On November 1, 2012, Parent unilaterally placed Student in another RTC in Utah due to Student's behaviors. Student asserts two claims: that District failed to offer Student a free appropriate public education (FAPE) for (1) the 2011-2012 school year and (2) the 2012-2013 school year, by failing to adequately assess Student,

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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).

to offer or provide special education and related services to meet Student's unique needs, or to follow proper procedure in developing Student's IEPs. As resolutions, Student requests that District (i) reimburse Parent for costs associated with his private RTC placements, (ii) provide compensatory education, and (iii) reimburse parent for legal fees incurred.

Student's complaint contains two claims expressly alleged against District only. All remedies sought are against District only. The complaint makes no reference to LACOE beyond alleging that District placed Student in a LACOE program during the 2012-2013 school year, that Student routinely failed to attend the LACOE program, that Parent removed Student from the LACOE program after approximately one month, and that LACOE issued a report card indicating that Student had exited the program without credits. No facts are alleged regarding any action or inaction by LACOE that deprived Student of a FAPE.

This complaint is insufficiently pled as to LACOE, in that it fails to provide LACOE with the required notice of a description of a problem arising under the IDEA as to LACOE, facts relating to the problem, and a proposed resolution for which Student seeks a remedy from LACOE.

ORDER

1. Student's complaint is insufficiently pled under section Title 20 United States Code 1415(c)(2)(D), as to the Los Angeles County Office of Education.

2. Student shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).[8]

3. 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.

4. If Student fails to file a timely amended complaint, the complaint will be dismissed as to respondent Los Angeles County Office of Education only.

5. All dates set in this matter will remain on calendar as to District.

Dated: July 08, 2013

/s/
ALEXA J. HOHENSEE
Administrative Law Judge

[8] The filing of an amended complaint will restart the applicable timelines for a due process hearing as to all parties.