

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. 2009020456

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On February 13, 2009, attorney Bruce Bothwell filed a Due Process Hearing Request¹ (complaint) for Parent, on behalf of Student, against the Torrance Unified School District (District).

On February 27, 2009, attorney Sharon Watt filed a Notice of Insufficiency (NOI) as to Student's complaint.

APPLICABLE LAW

The party against whom a due process hearing request has been filed has the right to challenge the sufficiency of the complaint. (20 U.S.C. § 1415(b) & (c);); Ed. Code § 56502, subd. (d)(1).² The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of section 1415(b)(7)(A) and Education Code section 56502, subdivision (c)(1). Section 1415(c)(2)(D) requires that the sufficiency of the complaint be evaluated based on the face of the complaint.

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. (§ 1415(b)(7)(A)(ii)(III) & (IV).) The purpose of these requirements is to promote fairness by providing parties against whom complaints are filed with a specific understanding of the allegations, and to provide a school district, where applicable, with sufficient information to

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 All statutory citations, unless otherwise indicated, are to Title 20 United States Code unless otherwise noted.

make a specific response to the complaint as required by section 1415(c)(2)(B), and to participate in a resolution session and mediation under section 1415 (e) and (f). (See H.R.Rep. No. 108-77, 1st Sess. (2003); Sen. Rep. No. 108-185, 1st Sess. (2003).) In addition, fundamental principles of due process apply to administrative proceedings in special education matters. A party against whom a complaint has been filed is entitled to know the nature of the specific allegations being made against it, such that the party may be able to prepare a defense. (*Tadano v. Manney* (9th Cir. 1947) 160 F.2d 665, 667; *Hornsby v. Allen* (5th Cir. 1964) 326 F.2d 605, 608.)

DISCUSSION

Student's complaint alleges several claims arising from Student's March 7, 2007, individualized education program (IEP) and several claims arising from Student's May 16, 2007, IEP. The facts alleged in Student's complaint are sufficient to put the District on notice of the issues forming the basis of the complaint. Student's complaint identifies the issues and sufficient facts and dates to document the problem to permit District to adequately respond to the complaint and attempt to participate in a resolution session and mediation. Therefore, Student's statement of her claims is sufficient.

Student's proposed resolutions include (1) District's funding of Student's tuition at a nonpublic school that will provide Student with a secure, specialized learning environment, and all related expenses, and (2) compensatory behavioral services consisting of aide support and home-based services to be provided by a nonpublic agency experienced in working with children with autism. Student requests these resolutions as a result of District's alleged denial of FAPE to Student. As discussed above, a complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (§ 1415(b)(7)(A)(ii)(IV).) Student has met the statutorily required standard of stating a resolution to the extent known and available to her at the time.

ORDER

1. The complaint is deemed sufficient under section 1415(b)(7)(A)(ii).
2. All mediation, prehearing conference, and hearing dates in this matter shall remain on calendar.

Dated: March 3, 2009

/s/

DEBRA HUSTON
Administrative Law Judge
Office of Administrative Hearings