

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. 2009080608

DETERMINATION OF SUFFICIENCY  
OF DUE PROCESS COMPLAINT

On August 19, 2009, Bruce Bothwell, attorney for Student, filed a Due Process Hearing Request<sup>1</sup> (complaint), against Torrance Unified School District (District). On September 3, 2009, Sharon A. Watt, attorney for District, filed a Notice of Insufficiency (NOI) as to Student's complaint. The Office of Administrative Hearings (OAH) found the first issue in the complaint to be sufficient, but found the remaining issues to be insufficiently pled.

On September 11, 2009, Student filed a First Amended Complaint (amended complaint). On September 25, 2009, District filed an NOI as to Student's amended complaint. OAH found the third, fourth, fifth and ninth issues in the amended complaint to be insufficiently pled. On September 30, 2009, Student filed a Second Amended Complaint (second amended complaint). On October 15, 2009, District filed an NOI as to Student's second amended complaint.

APPLICABLE LAW

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);<sup>2</sup> Ed. Code, § 56502, subd. (c)(1).)

The complaint is deemed sufficient unless the party against whom the complaint has been filed notifies OAH and the other party, in writing, within 15 days of receiving the complaint, that the complaint has not met the notice requirements. (§ 1415(c)(2)(C); Ed.

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<sup>1</sup> 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).

<sup>2</sup> All statutory citations are to Title 20 United States Code unless otherwise noted.

Code, § 56502, subd. (d)(1).) Section 1415(c)(2)(D) requires that the sufficiency of the complaint be evaluated based on the face of the complaint.

The party against whom the 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

In its NOI to the second amended complaint, the District asserts that the second amended complaint is insufficiently pled as to Student's third, fourth, fifth and ninth issues. The District does not challenge the remaining issues in the second amended complaint.<sup>3</sup>

Regarding the third issue in the second amended complaint, Student asserts that the District failed to offer an appropriate classroom placement for the Fall of 2009, when it offered placement in a general education kindergarten classroom. Student asserts that he has deficits in social, behavioral and academic skills that make the classroom developmentally inappropriate. Student provides some examples of skills he lacks. He further asserts that the class size, compared to his requested private preschool classroom, also make the District's offer inappropriate because he will not receive the appropriate level of instructional attention. This issue is sufficiently pled to put the District on notice as to the basis of Student's claim.

Regarding the fourth issue in the second amended complaint, Student asserts that due to his level of behavioral deficits, inattention, and non-responsiveness, he requires a trained full time one-to-one aide, supervised by a qualified behavior analyst. In support of his claim, Student lists several examples of behavioral and attention deficits, which he asserts, make the District's aide support offer inappropriate. This issue is sufficiently pled to put the District on notice as to the basis of Student's claim.

Regarding the fifth issue in the second amended complaint, Student asserts that he requires a 15 hours per week home program. Student provides specific examples of his deficits, and asserts that the school based services offered by the District are insufficient to appropriately address his needs, thus, requiring a home program in addition to school based services. This issue is sufficiently pled to put the District on notice as to the basis of Student's claim.

Regarding the ninth issue in the second amended complaint, Student asserts that the extended school year (ESY) services offered for the Summer of 2009 were insufficient to meet his needs. Student identifies specific areas of skill deficits, which he asserts, required more services than those offered by the District. Student identifies both the services offered

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<sup>3</sup> Student's complaint refers to issues as "problems". In this order, Student's "problems" will be called issues.

by the District, and the services that he believes were appropriate for ESY 2009. Student asserts that he would have regressed under the level of services offered by the District. This issue is sufficiently pled to put the District on notice as to the basis of Student's claim.

In summary, the facts alleged in Student's second amended complaint are sufficient to put the District on notice of the issues forming the basis of the complaint. Student's second amended complaint identifies the issues, and sufficient facts and dates to document the problem to permit the District to adequately respond to the complaint, and attempt to participate in a resolution session and mediation. Therefore, Student's issues number three, four, five and nine of the second amended complaint are sufficiently pled.

#### 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: October 19, 2009

/s/

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BOB VARMA  
Administrative Law Judge  
Office of Administrative Hearings