

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. 2010031920

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On March 30, 2010, Parent on behalf of Student (herein collectively referred to as Student) filed an Amended Due Process Hearing Request¹ (complaint) naming the Torrance Unified School District (District).

On April 13, 2010, the District timely filed a filed a Notice of Insufficiency (NOI) as to Student's complaint. For the reasons elaborated below, Student's complaint meets the legal standard of sufficiency for a due process 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 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 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

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)

⁴ 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.”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 ALJ.⁷

DISCUSSION

Student’s complaint contains three issues along with an initial detailed factual background section which precedes the discussion of the specific issues in dispute. In Issue One, Student alleges that the District failed to assess him in all areas of suspected disability. The District asserts that Student’s complaint does not give legally sufficient details regarding the specific areas in which Student believes the District failed to assess him and does not give a specific time frame for this failure. However, both the factual summary in Student’s complaint and the recitations in Issue One indicate that Student believes that the District should have administered a functional behavior assessment to him, should have referred him for a mental health assessment to the county department of mental health (an “AB 3632” assessment) and should have administered social/emotional assessments to him. While the time frame for this alleged failure is not clearly delineated, the statute of limitations mandates that the time period extends no longer than two years prior to the filing of Student’s complaint. It will be Student’s burden at hearing to prove when and if the District should have assessed Student in these areas.

The Individuals with Disabilities Education Act (IDEA) does not require that a person or entity filing a claim plead facts with particularity. A person is required to file a short and plain statement of the claim and the grounds upon which it rests, along with proposed resolutions. Issue One of Student’s complaint and the proposed resolutions for it meet that standard. Issue one is therefore legally sufficient.

The District does not address the other Issues raised in Student’s complaint. Issues Two, Three, and Four are therefore deemed sufficient as well.

ORDER

1. The complaint is sufficient under section 1415(b)(7)(A)(ii).

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).

2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: April 19, 2010

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings