

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT on behalf of STUDENT,

vs.

TORRANCE UNIFIED SCHOOL DISTRICT,

OAH CASE NO. 2010040070

TORRANCE UNIFIED SCHOOL DISTRICT,

vs.

PARENT on behalf of STUDENT.

OAH CASE NO. 2010030301

ORDER PARTIALLY GRANTING
DISTRICT'S NOTICE OF
INSUFFICIENCY

On March 30, 2010, Student filed a Due Process Hearing Request¹ (complaint) naming Torrance Unified School District (District) as the respondent. On April 14, 2010, District filed a timely Notice of Insufficiency (NOI) as to Student's complaint.

APPLICABLE LAW

The respondent to a due process hearing request has the right to challenge the sufficiency of the complaint. (20 U.S.C. § 1415(b) & (c).)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. (§ 1415(b)(7)(A)(ii)(III) & (IV); 56502, subdivision (c)). The determination of whether a complaint is sufficient is made by looking at the face of the complaint. (§ 1415(c)(2)(D).) In general, fundamental principles of due process entitle the respondent to know the nature of

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 are to Title 20 United States Code unless otherwise noted.

the allegations being made against it, such that respondent may 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 that Student is eligible for special education under the category of Autism. Student's complaint raises the following issues: that, in its March 2010 IEP offer, District denied Student a FAPE for the school year 2009/2010 1) by failing to provide Student with an appropriate offer of placement and services; 2) by failing to adequately assess Student in or provide Student an appropriate offer of Speech and Language therapy based on Student's unique needs; and 3) by failing to provide an appropriate offer of occupational therapy based on Student's unique needs.

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. Student is not required to provide the reasoning behind its proposed resolutions, as District argues.

With respect to Issues 1 and 2, Students' issues are supported by factual allegations, and the complaint states specific proposed resolutions. Student's complaint as to these two issues meets the minimum notice requirements of IDEA due process hearing requests.

However, Student's Issue Number 3, relating to Occupational Therapy (OT), is insufficient. Student alleges that Student has had problems in the past relating to daily living skills, feeding and eating. Student alleges no facts that support a claim that, during the applicable statutory period, Student's unique needs include OT and that District failed to offer adequate services in OT. Therefore, as to Issue Number 3, Student's complaint is insufficient.

ORDER

1. District's NOI is granted as to Issue Number 3. Pursuant to section 1415(c)(2)(E)(i)(II), Student shall be permitted to file an amended complaint. The filing of an amended complaint will restart the applicable timelines for a due process hearing.

2. The amended complaint shall comply with the requirements of section 1415(b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.

3. If Student fails to file a timely amended the complaint, the complaint will proceed to hearing as scheduled on issues 1 and 2.

Dated: April 19, 2010

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings