

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. 2010080561

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On August 13, 2010, Student filed a Due Process Hearing Request¹ (complaint) naming Torrance Unified School District (District) as the respondent. On August 27, 2010, District timely filed a Notice of Insufficiency (NOI). As discussed below, the complaint is insufficient, however, Student will have an opportunity to amend it.

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). All subsequent statutory references are to Title 20, United States Code, unless otherwise indicated.

² § 1415(b) & (c).

³ § 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

Here, the complaint purports to allege two issues: 1) “Child Find from August 2008 until the present time,” and 2) “Denial of FAPE from September of 2008 until the present time due to the District’s failure and refusal to timely and properly identify Student’s unique needs” and failure to “work more patiently and sensitively with Student.”

As to the “Child Find” issue, it cannot be determined what Student is alleging. In general, “Child Find” refers to the duty that IDEA imposes upon states to identify, locate and evaluate all children with disabilities who are in need of special education and related services. (20 U.S.C. §1412(a)(3)(A); Ed. Code, §§ 56171 & 56301, subds. (a) & (b).) “The purpose of the child-find evaluation is to provide access to special education.” (*Fitzgerald v. Camdenton R-III School District* (8th Cir. 2006) 439 F.3d 773, 776.) Student has alleged that during the limitations period, she was eligible for special education under multiple categories and was offered and/or provided services by the District. It cannot be determined from the factual recitations what exactly was missing from Student’s program that Student contends denied her a FAPE. Based on Student’s invocation of “child find” and the contradictory facts showing that at all times Student was eligible, it cannot be determined what Student is alleging in the first issue.

The second issue is also insufficient. Despite identifying a time frame of 2008 to the present, the complaint is devoid of any specific identification of how there was a “failure and refusal to timely and properly identify Student’s unique needs” as alleged. Student does not allege anything about what should have been done or what District refused to do, such that District cannot determine how Student is alleging her program was inadequate during the last two years. In particular, the factual recitations concentrate on events in the spring of 2010. To the extent Student pleads facts regarding two IEP team meetings that were held in March

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).

and May of 2010, she fails to allege any specifics about how the District's offers were insufficient. There are factual allegations about an incident where Student was not allowed to visit a school she was not attending, but no indication as to whether Student is contending this was a denial of FAPE. There are also factual allegations about interactions of District personnel with a county child welfare agency in 2010, but no indication as to how or whether Student contends such actions constitute a denial of FAPE. In sum, the second issue is broadly pleaded and covers two years, yet fails to include specific allegations or facts about the majority of the time period alleged. As pleaded, a reader can only guess as to what exactly Student contends denied her a FAPE. Thus, the complaint fails to provide District with sufficient notice of the issues for hearing.

ORDER

1. Student's complaint is insufficiently pled under section 1415(c)(2)(D).
2. Student shall be permitted to file an amended complaint under section 1415(c)(2)(E)(i)(II).⁸
3. 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.
4. If Student fails to file a timely amended complaint, the complaint will be dismissed.
5. All dates previously set in this matter are vacated.

Dated: September 8, 2010

/s/

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings

⁸ The filing of an amended complaint will restart the applicable timelines for a due process hearing.