

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. 2011030785

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On March 15, 2011, Student, through his parent, filed a Due Process Hearing Request¹ (complaint) naming the Torrance Unified School District (District).

On March 30, 2011, the District timely filed a Notice of Insufficiency (NOI) as to Student's 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 Title 20 United States Code 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

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).

named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.⁴

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 Administrative Law Judge.⁷

DISCUSSION

Student’s alleges four claims in the complaint, which are all insufficiently pled as discussed below. Student’s complaint is insufficiently pled in that it fails to provide the District with enough information about the problems Student has with his education program. The District is therefore not able to formulate a proper response or defense to the issues raised in Student’s complaint.

In his first issue, Student states that his school lacks the appropriate staff to assist him with his autistic challenges, although Student acknowledges that the school has done as much as it can to assist him. However, Student fails to state what his specific challenges are and how the school has failed to address those problems, or why the staff at the school is inappropriate. Student also fails to state the time frame in which he alleges the school has failed to address his challenges.

In issue two, Student states that the District has suggested that he attend a program which Student already attended during the summer. Student contends that he did not improve after attending the summer program because the program does not accommodate his

⁴ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

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).

condition. However, Student again fails to describe exactly what his condition is, what the program consisted of, why the program failed to address his needs, and what type of program he needs in order to receive a free appropriate public education. Student also fails to give any information about the program, such as the time period he attended it, whether it was a public school program, or if it was offered at a non-public school or other private facility.

Student's issue three states that he was not provided with a one-on-one paraprofessional. However, this issue fails to state the time period involved, whether Student's individualized education program (IEP) stated he was going to be provided with one-on-one assistance and the District failed to provide the service, or if the issue is that Student believes he should have been provided this service in the IEP. Student also fails to state why he believes he requires one-on-one assistance and how the failure to provide this service deprived him of an appropriate education.

Student's issue four suffers from the same defects as his other issues. Student contends that an emergency IEP was initiated by his school, which agreed with Student's doctors that he needed a more tailored program, but that someone named Ms. Parker disagreed with the doctors and stated that the District does not always agree. However, this issue fails to clarify whether Student agrees or disagrees with his emergency IEP. The issue fails to state what the emergency IEP provides and which parts of it Student believes are deficient. Student also fails to state what exactly his doctors have recommended and why he needs whatever they have recommended in order to receive an appropriate education. Finally, Student fails to state who Ms. Parker is and what, if anything, she has done that has resulted in Student failing to receive an appropriate educational program.

For all these reasons, Student's complaint is insufficient as presently worded.

MEDIATOR ASSISTANCE FOR NON-REPRESENTED PARENTS

A parent who is not represented by an attorney may request that the Office of Administrative Hearings (OAH) provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint.⁸ Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request. Student's mother may either contact OAH in writing or by calling the office in Sacramento at telephone number (916) 263-0880 if she would like to request assistance in preparing an amended complaint.

⁸ Ed. Code, § 56505.

ORDER

1. Student's complaint is insufficiently pled under section Title 20 United States Code 1415(c)(2)(D).
2. Student shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).⁹
3. The amended complaint shall comply with the requirements of Title 20 United States Code section 1415(b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.
4. If Student's mother wishes assistance from an OAH mediator in formulating the allegations of the amended complaint, she may either write to OAH in Sacramento or telephone OAH at the number indicated above.
5. If Student fails to file a timely amended complaint, the complaint will be dismissed.
6. All dates previously set in this matter are vacated.

Dated: April 5, 2011

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings

⁹ The filing of an amended complaint will restart the applicable timelines for a due process hearing.