

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. 2011040128

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On April 1, 2011 Parent, on behalf of their daughter (Student), filed a Due Process Hearing Request¹ (complaint) naming Torrance Unified School District (District).

On April 15, 2011, Sharon A. Watt, attorney for District, 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).

The complaint is deemed sufficient unless a party notifies the Office of Administrative Hearings and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements.³

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(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).

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.⁴ 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.⁵

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁶ The pleading requirements should be liberally construed in light of the broad remedial purposes of the Individuals with Disabilities Education Act (IDEA) and the relative informality of the due process hearings it authorizes.⁷ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁸

DISCUSSION

The facts alleged in Student’s complaint are sufficient to put the District on notice of the issues forming the basis of the complaint. Student’s complaint identifies five issues and adequate related facts about the problems to permit District to respond to the complaint and participate in a resolution session and mediation.

Student’s first claim alleges that after the completion of a multipart individualized education program (IEP) team meeting that concluded on April 2, 2009, Parents received an

⁴ 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

⁵ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁶ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁷ *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.].

⁸ 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).

IEP document that included a graduation plan which would result in Student obtaining a certificate of completion rather than a regular diploma. Student contends that this change was done without notice and without the input of Parents in the decision process. Student's complaint alleges facts that if true may result in a procedural violation of the IDEA and a denial of a FAPE. Student sufficiently identifies the issue and related facts about the problem.

Student's second claim alleges that in school year (SY) 2009-2010 Student was placed in a lower level and more restrictive class room. Student contends that this change was done without notice and without the input of Parents in the decision process. Student's complaint alleges facts that if true may result in a procedural violation of the IDEA and a denial of a FAPE. Student sufficiently identifies the issue and related facts about the problem.

Student's third claim alleges that beginning in May 2009 Parents notified District that their daughter was receiving inconsistent behavioral approaches to teaching because she was receiving inadequate paraeducator support, specifically they were inadequately trained; inadequately supervised and received inadequate behavioral and education support. Student's complaint alleges facts that if true may result in a substantive violation of the IDEA and a denial of a FAPE. Student sufficiently identifies the issue and related facts about the problem.

Student's fourth claim alleges that beginning in May 2009 District began to hold team meetings inconsistently and failed to utilize the communication log. These deficits contributed to corrective actions being taken too slowly, which negatively affected Student's educational opportunity. Student's complaint alleges facts that if true may result in procedural and substantive violations of the IDEA and a denial of a FAPE. Student sufficiently identifies the issue and related facts about the problem.

Student's fifth claim alleges that Parents requested an IEP team meeting that was convened on June 30, 2009. At that meeting, District failed to invite necessary District personnel so that Student's placement could be discussed. These actions resulted in Student's placement not being addressed. Student's complaint alleges facts that if true may result in procedural and substantive violations of the IDEA and a denial of a FAPE. Student sufficiently identifies the issue and related facts about the problem.

Student's proposed resolution requests a full applied behavior analysis program to address her academic, behavioral, social and independent living needs. Furthermore, Student requests that she be provided with an intensive individualized program of instruction in core subjects, including English, reading and mathematics. A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (20 U.S.C. §1415(b)(7)(A)(ii)(IV).) The proposed resolution stated in Student's complaint is not well-defined. However, Student has met the statutorily required standard of stating a resolution to the extent known and available to her at the time.

ORDER

1. The complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: April 18, 2011

/s/

MICHAEL G. BARTH
Administrative Law Judge
Office of Administrative Hearings