

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. 2011060484

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On June 09, 2011, Student filed a Due Process Hearing Request ¹ (complaint) naming Torrance Unified School District (District).

On June 24, 2011, 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).

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

The complaint contains five claims alleging that District denied Student a free appropriate public education (FAPE) on June 18, 2009, by (1) failing to assess Student in all areas of suspected disability; (2) failing to timely complete an assessment requested by parents and to convene an IEP team meeting to review the assessment; (3) failing to convene an IEP to determine Student’s eligibility for special education services; (4) failing to offer the parents the opportunity to participate in the process of determining eligibility; and (5) wrongfully determining Student was not eligible for special education services.

Student alleges in her complaint that she struggled academically in elementary school. Specifically, by the end of the second grade, she contends she was performing in the impaired to severely impaired range in reading, writing and attention. Student further alleges that Parents requested a District assessment of Student in March 2009, but District failed to assess Student. Parents then obtained a privately funded assessment in June 2009 in which Student contends she was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD), an Auditory Processing Disorder, and an Adjustment Disorder (with mixed anxiety and depression). In addition, Student alleges that the private assessment concluded that she was

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).

eligible for special education services, and contained recommendations for placement in a structured specialized and a therapeutic day school where she could receive services and supports to address her educational needs. Student contends that on June 18, 2009, District denied eligibility for special education services, which resulted in her parents enrolling her at Summit View School. As such, Student seeks an order or reimbursement for tuition and fees for attendance at Summit View, and for privately obtained assessments.

Here, reading the complaint in its entirety and liberally construing it in light of the broad remedial purposes of the IDEA and the relative informality of the due process hearings, all of the issues are sufficiently pled to put District on notice as to the basis of Student's claims to permit District to respond to the complaint and participate in a resolution session and mediation. Therefore, the complaint is sufficient.

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: June 29, 2011

/s/

STELLA OWENS-MURRELL
Administrative Law Judge
Office of Administrative Hearings