

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TORRANCE UNIFIED SCHOOL
DISTRICT AND SOUTHWEST SELPA.

OAH CASE NO. 2011090129

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On September 6, 2011, Mark Woodsmall, Attorney at Law, on behalf of Student, filed a Due Process Hearing Request¹ (complaint) naming the Torrance Unified School District (District).

On September 21, 2011, Sharon A. Watt, Attorney at Law, on behalf of 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

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).

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

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 Individuals with Disabilities Education Act 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 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 the issues and adequate related facts about the problem to permit District to respond to the complaint and participate in a resolution session and mediation.

Student presents four issues in her complaint as discussed below:

Issue No. 1: [Whether] District [denied Student a free appropriate public education because]⁸:

- a. it failed to conduct an appropriate behavioral assessment for Student;

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).

⁸ The ALJ has edited the issues for the purposes of analysis.

- b. it failed to conduct an assistive technology assessment for Student, despite a request for assistive technology support;
- c. it failed to conduct an adequate psycho-educational assessment of Student; and
- d. it failed to conduct a proper speech and language assessment of Student?

Issue No. 2: [Whether Student's] IEPs [individualized education programs] for the 2009-2010, 2010-2011 and 2011-2012 school years do not state accurate present levels of performance, do not provide measurable annual goals and therefore deny [Student] a FAPE?

Issue No. 3: [Whether] District denied Student a FAPE for school years 2009-2010, 2010-2011 and 2011-2012 because:

- a. it failed to provide Student with a behavior support plan for school years 2009-2010, 2010-2011 and 2011-2012;
- b. it failed to ensure that a safe educational environment was being provided for [Student]; and
- c. it failed to offer Student placement in the least restrictive environment?

Issue No. 4: [Whether] District has procedurally denied Student a FAPE because it impeded Parent's rights to participate in the IEP development process during the June 9, 2010 IEP because it failed to ensure that necessary members of the IEP team be present at the meeting?

Accordingly, Student's complaint identifies the issues and adequate related facts about the problems to permit District to respond to the complaint and participate in a resolutions session and mediation. Facts presented outside of the statute of limitations are presented for background information to assist District in understanding the complaint. Therefore, the four issues presented in Student's complaint are legally 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: September 22, 2011

/s/

MICHAEL G. BARTH
Administrative Law Judge
Office of Administrative Hearings