

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. 2013010615

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On January 22, 2013, Student filed a ‘Notice of Objection to [District’s] Petition . . . and Motion to transfer disabled student to another school, and have a 1-on-1, [and] AAC device. . .’ against the Torrance Unified School District (District), which the Office of Administrative Hearings (OAH) deemed to be a Due Process Hearing Request (complaint).

On January 30, 2013, Student filed a Request for Mediation and Due Process Hearing, which OAH deemed to be an amended complaint, and a Request to Amend the complaint. OAH granted Student’s motion to amend on February 11, 2013. On February 12, 2012, the 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.¹ 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.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) and Education Code section 56502, subdivision (c)(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

¹ 20 U.S.C. § 1415(b) & (c); Ed. Code 56502, subd. § (d)(1).

² 20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).

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

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

Student’s complaint contains three issues for hearing regarding the District’s alleged failure to adequately assess her unique needs for an alternative augmented communication (AAC) device, failing to provide adequate Student with a one-to-one aide and not providing speech and language services set forth in Student’s individual educational program (IEP).⁸ As to Issue 1, Student’s complaint contains a sufficient narrative as to her unique needs and

³ 20 U.S.C. § 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.

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 If Student believes that there are other issues in the amended complaint, Student will need to file a second amended complaint as the three issues noted in this order are the only issues that could be discerned from Student’s pleading. The filing of an amended complaint will restart the applicable timelines for a due process hearing. (20 U.S.C. § 1415(c)(2)(E)(ii).)

why this requires the District to provide her with a one-to-one aide. Accordingly, Student alleges sufficient facts in Issue 1 to support claims regarding need for a one-to-one aide to put the District on notice, and therefore this claim is sufficient.

As to Issue 2, Student's complaint contains a sufficient narrative as to her unique needs and why she requires the District to provide her an AAC device and the District's need to conduct an AAC assessment. Accordingly, Student alleges sufficient facts in Issue 2 to support claims regarding need for an AAC assessment and services to put the District on notice, and therefore this claim is sufficient.

As to Issue 3, Student's complaint contains sufficient facts as to the District's obligation to provide speech and language services in her IEP and the District's purported failure to do so. Therefore, Student alleges sufficient facts in Issue 3 to support claims regarding speech and language services to put the District on notice, and therefore this claim is insufficient.

Therefore, Issues 1, 2, and 3 are sufficiently pled to put the District on notice as to the basis of Student's claims.

Student's proposed resolution is that the District provide a one-to-one aide, an AAC assessment and services, speech and language services and a private placement. 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 resolutions stated in Student's complaint are well-defined requests that meet the statutorily required standard of stating a resolution to the extent known and available to Student 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: February 14, 2013

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings