BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS on behalf of STUDENT, v. TORRANCE UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2009120905 DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On December 22, 2009, Parents, on behalf of Student (herein Student) filed a Due Process Hearing Request][1] (complaint) naming the Torrance Unified School District (District) as the respondent.[2] The District did not receive a copy of the complaint until January 4, 2010.

On January 14, 2010, the District filed a Notice of Insufficiency (NOI) as to Student's complaint. The NOI was timely filed within 15 days of the District's receipt of the complaint.

APPLICABLE LAW

The respondent to a due process hearing request has the right to challenge the sufficiency of the complaint. (20 U.S.C. § 1415(b) & (c).)[3] The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of 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. (§

[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] Although the complaint inaccurately refers to "LAUSD" instead of "TUSD" at times in the body of the complaint, it is clear that was inadvertent error. It is clear that the complaint concerns Torrance Unified School District and there is no contention that Student attended LAUSD at any time pertinent to this case.

[3] All statutory citations are to Title 20 United States Code unless otherwise noted.

1415(b)(7)(A)(ii)(III) & (IV).) The purpose of these requirements is to promote fairness by providing respondents with a specific understanding of the allegations and to provide a school district with sufficient information to make a specific response to the complaint as required by section 1415(c)(2)(B), and to participate in a resolution session and mediation under section 1415, subsections (e) and (f). In addition, fundamental principles of due process apply to administrative proceedings in special education matters. The respondent is entitled to know the nature of the specific allegations being made against it, such that respondent may be able to prepare a defense. (*Tadano v. Manney* (9th Cir. 1947) 160 F.2d 665, 667; *Hornsby v. Allen* (5th Cir. 1964) 326 F.2d 605, 608.)

DISCUSSION

In addition to many pages of background information concerning Student's educational history, Student raises three issues, along with several sub-issues, which address her contention that the District did not offer her a free appropriate public education (FAPE). In Issue One, Student alleges that the District committed procedural violations of the Individuals with Disabilities Education Act. Student first alleges that the District failed to give adequate prior written notice of its refusal to place Student in a non-public school or to provide Student with educational therapy or tutoring. Student also alleges that the District failed to provide Parents with a written assessment report of the testing done by the District school psychologist. Issue One also alleges that the District committed a procedural violation of the Act by failing to develop a language and speech goal for Student at an individualized education program (IEP) meeting in November of 2009.

In Issue Two, Student alleges that the District failed to asses her in all areas of suspected disability by failing to assess her for memory deficits and auditory processing deficits during the language and speech assessment administered by the District. Student also alleges that the District failed to administer a transition assessment to her and failed to develop a complete and adequate individualized transition plan as part of Student's IEP.

In Issue Three, Student alleges that the District failed to develop a substantively adequate IEP for her by failing to provide appropriate transition services since June 2009, failing to provide an adequate educational program in the June IEP because that IEP only offered Student two periods a day of specialized academic instruction, and failing to provide an adequate educational program in the September, November, and December 2009 IEPS, because the District only offered Student three periods a day of specialized academic instruction. Student alleges that her IEPS during 2009 were also deficient because they did not provide her with any related services, supports, or specialized special education instruction in general education classes. Student further alleges that the District's offer of a peer tutor was insufficient to meet her needs. Finally, Student alleges that the goals developed by the District were insufficient to meet her needs, particularly as to the lack of a language and speech goal in the November IEP.

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

sufficient facts and dates to document the problem to permit the District to adequately respond to the complaint and attempt to participate in a resolution session and mediation. While the issues raised in the District's NOI, if included in Student's complaint, would make Student's issues even more clear than they now are, such specificity is not required by the IDEA.

Therefore, Student's statements concerning each of her three issues, including all sub-issues, are sufficient.

ORDER

1. The complaint is deemed sufficient under section 1415(b)(7)(A)(ii).

2. All mediation, prehearing conference, and hearing dates in this matter shall remain on calendar.

Dated: January 21, 2010

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings