

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. 2010010894

DETERMINATION OF
INSUFFICIENCY OF DUE
PROCESS COMPLAINT

On January 25, 2010, Parent filed a Due Process Hearing Request¹ (Complaint) naming Torrance Unified School District (District) as respondent. On February 4, 2010, District filed a Notice of Insufficiency (NOI) as to Parent’s Complaint.

APPLICABLE LAW

Under the Individuals with Disabilities Education Improvement Act (IDEA), parents have the right to file a special education due process complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).)

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).)² The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of section 1415(b)(7) (A). The notice of insufficiency shall be filed within fifteen days of receiving the due process hearing request. The hearing officer shall make a sufficiency determination on the face of the request for due process hearing. (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

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

resolution of the problem to the extent known and available to the party at the time. (§ 1415(b)(7)(A)(ii)(III) & (IV); Ed. Code, § 56502, subd. (c).) Moreover, fundamental principles of due process apply to these types of administrative proceedings. As such, a respondent is entitled to know the nature of the specific allegations in order 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

The IDEA does not require that the person or entity filing a claim plead facts with particularity but rather the requirement is, in essence, to file a short and plain statement of the cause of action and the grounds upon which it rests, and to the relief entitled. In other words, the claim must answer the questions who (i.e. the district), what (what are you claiming), how (what are the salient facts regarding your claim/the grounds) and when (timeframe).

District contends that the issues in the Complaint are insufficient because they fail to set out sufficient facts or information to support Parent's claims. Specifically, the District argues that Parent fails to allege facts upon which the District can understand the true nature of the allegations. The District also contends that it is unaware of any legal authority designated "23 USR Sec. 247 under the D.O.J. Civil Rights Dept," but is aware of 18 U.S.C. § 247 that pertains to damaging religious property and interfering with a person's exercise of religious beliefs. Finally, the District contends that these claims pertain to the federal American with Disabilities Act (ADA) rather than the IDEA, and violations of the ADA are not cognizable under the IDEA.³ (42 U.S.C. §§ 12101 et. seq.)

Parent alleges four claims against the District and the Complaint includes *Exhibit A*, a January 15, 2010 letter from Parent to the District (the letter) that describes Student's alleged injury and requests an accommodation of a 1:1 aide. Parent contends that if the matter is not corrected, then the District should pay for private school. Specifically, the Complaint alleges that District violated the ADA because it: (1) failed to provide accommodations for Student, a disabled autistic child; (2) discriminated against Student as to accommodations and disability; and, (3) harassed and retaliated against Student. Finally, the Complaint alleges a violation of "23 USR Sec. 247 under the D.O.J. Civil Rights Dept."

The facts alleged in the Complaint are insufficient to put District on notice of the issues forming the basis of the Complaint. The letter requests a 1:1 aide because of District's alleged negligence in "failing to attend (watching) to him." The first claim does not describe Student's placement and unique needs, and does not provide facts as to why the District's failure to provide him with a 1:1 aide would deny Student a FAPE. The second and third claims do not describe District's alleged acts of discrimination, harassment, and retaliation and how those acts relate to District's offer to Student of a FAPE. The fourth claim cites a

³ The District's contention that the violations of the ADA are not cognizable under the IDEA is not appropriate for a NOI, which just looks at the face of the complaint to determine its sufficiency. The District's contention should be made through a Motion to Dismiss, if Student files an amended complaint.

violation of “23 USR Sec. 247,” and this legal citation is invalid. In addition, all of Parent’s claims fail to provide the following information: a specific time frame (dates and/ or school years); the facts relating to these claims; Student’s unique needs; and, District’s offer to Student of services and placement to meet his special needs (FAPE). Therefore, the Complaint is insufficient.

As discussed above, a respondent is entitled to know the basis of each claim and the nature of the specific allegations being made against it, with respect to each issue or problem, so that the respondent may be able to prepare a response, prepare for a resolution meeting, or prepare a defense for hearing. For the reasons described above, the Complaint is insufficient because it does not comply with the requirements of Section 1415(b)(7).

ORDER

1. Pursuant to section 1415(c)(2)(D), the Complaint is insufficiently pled, and the District’s notice of insufficiency is granted.⁴
2. Pursuant to section 1415(c)(2)(E)(i)(II), Student shall be permitted to file an amended complaint.
3. The amended complaint shall comply with the requirements of section 1415 (b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.
3. Parents are advised that under Education Code section 56505, a parent who is not represented by an attorney may request that the Office of Administrative Hearings provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. Parents are encouraged to contact OAH for assistance in amending their due process hearing request.
4. If Student fails to file a timely amended complaint, the Complaint will be dismissed.
5. All dates previously set in this matter are vacated.

Dated: February 10, 2010.

/s/

CLARA SLIFKIN
Administrative Law Judge
Office of Administrative Hearings

⁴ Filing of an amended complaint restarts the applicable timelines pursuant to 20 U.S.C. 1415(c)(2)(E)(ii).