

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 SUFFICIENCY  
OF DUE PROCESS COMPLAINT

On February 17, 2010, Student filed a Due Process Hearing Request<sup>1</sup> (complaint) naming Torrance Unified School District (District) as the respondent. The complaint consists of a handwritten form “Request for Mediation and Due Process Hearing” with an attached, typewritten, “Declaration of Defendant and Motion To (or for) Continue hearing scheduled as to Amended Complaint attached and Declaration of Plaintiff’s with Good Cause.” On February 25, 2010, District timely filed a Notice of Insufficiency (NOI). As discussed below, the complaint is sufficient only as to Issue One as phrased by the ALJ in this Order. Student will be given an opportunity to amend the complaint, however, if Student fails to amend the complaint, Student may proceed to hearing only on Issue One as phrased by this Order.

APPLICABLE LAW AND DISCUSSION

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).<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

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<sup>1</sup> 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).

<sup>2</sup> 20 U.S.C. § 1415(b) & (c).

<sup>3</sup> 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV)

<sup>4</sup> See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”<sup>5</sup> 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.<sup>6</sup> Whether the complaint is sufficient is a matter within the sound discretion of the ALJ.<sup>7</sup>

Issue One of the complaint alleges violation of the Americans with Disabilities Act (ADA), an issue outside of OAH jurisdiction. However, when read together, the handwritten portions of the complaint and the typewritten attachment are sufficient to put the District on notice that Student is alleging that: “Student was denied a free appropriate public education (FAPE) because he was not provided a one-to-one aide during the 2009-2010 school year.” As a remedy, Student seeks reimbursement of private school tuition and/or provision of a private school. As phrased above, the issue is sufficient, but insufficient to the extent Student is trying to make any other claim.

Issue Two of the complaint is insufficient as it is limited to an allegation that is outside of OAH jurisdiction, in particular, that District violated the ADA by retaliating against parents for filing the first complaint. Nothing in the handwritten or typewritten portions of the complaint provides the District with notice of a particular “problem” relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. Issue Two is insufficient.

Issue Three of the complaint is insufficient. Student alleges that a failure to notify parents about the “removal of his 1-on 1 and hold an IEP on the matter of parent’s refusal.” As a remedy, Student seeks an IEP and “submit name to question as to [District] respon[s]e to OAH 2-4-10. Child be granted 1-on-1.” From these allegations, it cannot be determined what the exact “problem” is relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child.

Issue Four of the complaint is insufficient. Student alleges a violation of title 20 United States Code section 1415(d)(2) which describes the required contents of a procedural safeguards notice. However, the facts alleged refer to “failure to submit notice of changes in IEP and [i]gnore parent’s request as to 1-on-1.” It cannot be determined whether this claim is asserting a denial of prior written notice or some other claim related to parent participation in the IEP process. Issue Four is insufficient.

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<sup>5</sup> Sen. Rep. No. 108-185, *supra*, at p. 34.

<sup>6</sup> *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.].

<sup>7</sup> 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).

Issue Five alleges violations of the ADA and Code of Civil Procedure section 2019.010 and seeks “punitive damages” and tuition reimbursement. Violations of the ADA and the Code of Civil Procedure are outside OAH jurisdiction. Student has alleged no facts on which it can be determined what the “problem” is with the provision of a FAPE. Issue Five is insufficient.

Issue Six alleges “see additional complaints attached in declaration & motion of plaintiff.” The typewritten attachment alleges a violation of the ADA and negligence, both of which are outside of OAH jurisdiction. It cannot be determined from the face of the complaint what “problem” related to the provision of a FAPE Student is alleging. Issue Six is insufficient.

### ORDER

1. Issue One of the Complaint is sufficient only to the extent it alleges “Student was denied a free appropriate public education (FAPE) because he was not provided a one-to-one aide during the 2009-2010 school year.” Issue One is insufficient as to any other issue Student is attempting to allege.

2. Issues Two through Six of the complaint are insufficient.

3. Student shall be permitted to file an amended complaint within 14 days. The filing of an amended complaint will restart the applicable timelines for a due process hearing. 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 does not file an amended complaint within 14 days of the date of this order, the matter shall proceed to hearing only on the allegation that “Student was denied a free appropriate public education (FAPE) because he was not provided a one-to-one aide during the 2009-2010 school year.”

Dated: February 25, 2010

/s/

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RICHARD T. BREEN  
Administrative Law Judge  
Office of Administrative Hearings