

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. 2010070245

ORDER OF DETERMINATION OF  
SUFFICIENCY OF AMENDED DUE  
PROCESS COMPLAINT

On July 2, 2010, Steven Wyner, attorney, filed a Due Process Hearing Request<sup>1</sup> (complaint) on behalf of Parent and Student, which named Torrance Unified School District (District). On July 16, 2010, Sharon Watt, attorney for District, filed a Notice of Insufficiency (NOI) as to Student's complaint. On July 20, 2010, Administrative Law Judge (ALJ) Michael G. Barth issued an Order, determining that the complaint was sufficient.

On October 4, 2010, Student filed a Motion for Leave to File an Amended Due Process Complaint. The unopposed motion was granted and the amended complaint was deemed filed on October 19, 2010. On November 2, 2010, the District timely filed an NOI as to Student's amended complaint.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.<sup>2</sup> 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.<sup>3</sup> These requirements prevent vague and confusing complaints, and promote fairness by providing the

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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)

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>

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>

## DISCUSSION

The initial complaint addressed the 2008-2009 and 2009-2010 school years. In moving for leave to file the amended complaint, Student sought to add the 2010-2011 school year to the due process proceeding. Therefore, in granting the unopposed motion, OAH allowed Student to add assertions relative to the 2010-2011 school year. The amended complaint’s allegations for the 2008-2009 and 2009-2010 are the same as those in the complaint.

In its NOI to the amended complaint, District contends there are two insufficiencies. The first is that the amended complaint’s allegations pertaining to goals and counseling for the 2008-2009 school year are insufficiently pled. Student made the same assertion in the NOI to the complaint and the ALJ found the complaint to be sufficient in this regard. The first contention of insufficiency has already been ruled upon in the July 20, 2010 Order. The amended complaint’s allegations pertaining to goals and counseling for the 2008-2009 school year are the same as those in the complaint and are, therefore, sufficiently pled.

The second contention of insufficiency pertains to Student’s assertion that the District failed to consider and/or implement the Diagnostic Center assessment’s recommendations. The amended complaint asserts that the assessment report was reviewed on November 6, 2009, but thereafter the District did not review the assessment report at the December 9, 2009 IEP. District contends the allegations are insufficient because the amended complaint

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<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.

<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).

does not specify what recommendations of the Diagnostic Center assessment that the District failed to consider and/or implement at the December 2009 IEP.

District should not now be asserting the insufficiency of allegations related to the 2009 Diagnostic Center assessment in its NOI to the amended complaint. The allegations to which District now refers were also in the complaint, before amended. District's NOI to the complaint did not assert that the Diagnostic Center allegations were insufficient. The ALJ found the complaint to be sufficiently pled. To now assert that the amended complaint's allegations are insufficient, when the same allegations were in the initial complaint which was ruled to be sufficient in response to the District's NOI, is duplicative and unnecessary.

However, even when now separately considered, District's contention is without merit. The amended complaint states at page 10, lines 21 – 24, that the November 6, 2009 meeting was not an IEP meeting. At page 23, lines 1 – 10, Student asserts that the December 9, 2009 annual IEP team never discussed the Diagnostic Center assessment and, therefore, was never reviewed at an IEP. The amended complaint's contention is that Student was entitled to have the Diagnostic Center's assessment reviewed and discussed by the team at an IEP meeting; it was not. Student contends that none of the assessment's recommendations were considered at the December 2009 IEP. These allegations provide District with sufficient information so that it understands Student's contentions, enabling the District to develop an informed response for purposes of mediation and hearing.

#### 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: November 08, 2010

/s/  
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CLIFFORD H WOOSLEY  
Administrative Law Judge  
Office of Administrative Hearings