

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 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 (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.

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 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

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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.

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

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 facts alleged in student's complaint are sufficient to put district on notice of the issues forming the basis of the complaint. Student's complaint identifies the issues and adequate related facts about the problem to permit district to respond to the complaint. The six issues identified are discussed individually as follows:

Student's first claim alleges that during the 2008-2009 school year district denied student a FAPE by committing procedural and substantive violations of the IDEA: failing to provide progress reports; failing to conduct a functional analysis assessment; failing to timely conduct a functional behavioral assessment; failing to develop a behavior intervention plan; failing to conduct a vocational assessment; and failing to develop an individualized transition plan. Student sufficiently identifies the issues and related facts about the problem.

Student's second claim alleges that during the 2008-2009 school year district denied Student a FAPE because the alleged violations described in the first claim impeded parental participation in the decision-making process. Student sufficiently identifies the issues and related facts about the problem..

Student's third claim alleges that during the 2008-2009 school year district denied student a FAPE by committing substantive violations of the IDEA<sup>8</sup>: failure to implement all of the goals and objectives established in the November 2008 individualized education program (IEP): failure to provide designated instructional services in social skills and priming; failure to provide adequate behavioral interventions; failure to provide qualified and properly trained aides; failure to provide social skills instruction and modeling opportunities; failure to provide adequate instruction in areas of functional and independent living skills; failure to provide appropriate and adequate services for post-secondary transition; and failure to provide a safe educational environment. Student sufficiently identifies the issues and related facts about the problem.

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<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).

<sup>8</sup> Student also alleges that these constitute violations of Section 504. Since the Office of Administrative Hearings does not have jurisdiction over violations of Section 504, this may be raised in a motion to dismiss this portion of the complaint.

Student's fourth claim alleges that during the 2009-2010 school year district denied student a FAPE by committing procedural and substantive violations of the IDEA. Student identifies all of the procedural and substantive violation listed in the first claim. Student sufficiently identifies the issues and related facts about the problem.

Student's fifth claim alleges that during the 2009-2010 school year district denied student a FAPE by committing substantive violations of the IDEA: failure to review the triennial assessment conducted by the Diagnostic Center during an IEP meeting; failure to conduct a functional analysis assessment, a timely vocational assessment and develop an transition plan; failure to properly constitute an IEP team for the December 9, 2009 IEP; failure to properly constitute an IEP team for the June 9, 2010 IEP; failure to make an offer of services at the December 9, 2010 IEP; failure to review with parents and the IEP team a new Behavioral Support Plan at the June 9, 2010 IEP; and failure to make a formal offer of placement and services at the June 9, 2010 IEP. Student also identifies all of the substantive violations listed in the third claim. Student sufficiently identifies the issues and related facts about the problem.

Student's sixth claim alleges that during the 2009-2010 school year district denied student a FAPE by impeding parental participation in the decision-making process: failure to review the triennial assessment conducted by the Diagnostic Center during an IEP meeting; failure to conduct a functional analysis assessment, a timely vocational assessment and develop an transition plan; failure to properly constitute an IEP team for the December 9, 2009 IEP; failure to properly constitute an IEP team for the June 9, 2010 IEP; failure to make an offer of services at the December 9, 2010 IEP; failure to review with parents and the IEP team a new behavioral support plan at the June 9, 2010 IEP; and failure to make a formal offer of placement and services at the June 9, 2010 IEP. Student also identifies all of the procedural and substantive violation listed in the first claim. Student sufficiently identifies the issues and related facts about the problem.

Student provides proposed resolutions of the problems to the extent known and available at the time, including reimbursement for transportation and fees as well as compensatory education.

#### ORDER

1. The complaint is sufficient under section 1415(b)(7)(A)(ii).
2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: July 20, 2010

/s/

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MICHAEL G. BARTH  
Administrative Law Judge  
Office of Administrative Hearings

