

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. 2010090015

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On August 30, 2010, Student filed a Due Process Hearing Request¹ (complaint) naming Torrance Unified School District (District) as the respondent. The complaint alleged that the District's offer of placement and services at the June 21, 2010 IEP denied Student a FAPE on the following grounds: 1) that a change of eligibility category from autistic like behavior to speech-language impaired resulted in a lack of services to address Student's behavior and social-emotional deficits; 2) that Student's unique needs require a full time aide, not just 30 minutes of behavior consultation; 3) that Student's unique needs require home-based behavior services; and 4) that Student requires ESY services consisting of home and community behavior intervention services. The issues alleged are supported by relevant factual allegations. In addition, the complaint includes proposed resolutions of: a change in eligibility category, provision of behavior aide services, family reimbursement for privately-funded behavior services, compensatory behavior services, and ESY consisting of behavior services.

On September 14, 2010, District timely filed a Notice of Insufficiency (NOI). District contends the complaint is insufficient because there is insufficient detail about the "autism-specific" services Student contends she was denied, there was insufficient explanation of facts justifying an ESY offer, and insufficient detail about the services Student seeks reimbursement for as a remedy. However, as discussed below, the complaint is sufficient.

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). All subsequent statutory references are to Title 20 United States Code, unless otherwise indicated.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.² 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.³ 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.⁴

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

DISCUSSION

Here, the complaint is sufficient to put the District on notice of Student’s issues for hearing and the proposed resolutions. The complaint is clearly limited to a single, recent IEP team meeting. Read as a whole, the “autism specific services” Student is referring to in the complaint are a behavior aide in school and home behavior services during the school year and ESY. The complaint adequately alleges that District’s offer reduced behavior services to 30 minutes per week of behavior consultation. Student adequately has alleged that behavior

² § 1415(b) & (c).

³ § 1415(b)(7)(A)(ii)(III) & (IV)

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

⁵ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁶ *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.].

⁷ 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).

services are needed to address inflexibility, difficulty with transitions, and difficulty with social situations. The proposed resolutions are adequate to notify the District that parent is seeking reimbursement for similar behavior services and modifications of the IEP to include behavior services. As a whole, the complaint meets the IDEA's notice requirements both as to the issues for hearing and the proposed resolutions.

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: September 14, 2010

/s/

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings