

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Consolidated Matters of:  PARENT ON BEHALF OF STUDENT,  v.  TORRANCE UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2010090534
TORRANCE UNIFIED SCHOOL DISTRICT,  v.  PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2010080129  ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On August 2, 2010, attorney Sharon A. Watt, on behalf of the Torrance Unified School District (District), filed a Due Process Hearing Request<sup>1</sup> (District's complaint) against Student. This matter was designated as Office of Administrative Hearings (OAH) Case No. 2010080129. On September 14, 2010, N. Jane DuBovy and Mandy S. L. Favaloro, attorneys for Student, filed a Due Process Hearing Request<sup>2</sup> (Student's complaint) against District. This matter was designated as OAH Case No. 2010090534. On September 21, 2010, OAH consolidated both cases. On September 28, 2010, 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>3</sup> The party filing the complaint is not entitled to a hearing

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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> See footnote 1, *ante*.

<sup>3</sup> 20 U.S.C. § 1415(b) & (c).

unless the complaint meets the requirements of title 20 United States Code 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>4</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>5</sup>

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”<sup>6</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>7</sup> Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.<sup>8</sup>

## DISCUSSION

The facts alleged in Student’s complaint are sufficient to put the District on notice of the issues forming the basis of the complaint.<sup>9</sup> Student alleges three issues. First, Student

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<sup>4</sup> 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

<sup>5</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>6</sup> Sen. Rep. No. 108-185, *supra*, at p. 34.

<sup>7</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>8</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>9</sup> District contends that Student’s claims are barred by the statute of limitations. A NOI is not the proper means by which to seek determination of District’s contentions, as the

alleges District impeded Parent's meaningful participation in the development of Student's individualized education plan (IEP) resulting in a loss of educational benefit, thereby denying Student a FAPE. Student's complaint includes related facts alleging District failed to consider Parent's input and the results of an independent educational evaluation (IEE) when developing Student's IEP. Student also alleges that District predetermined Student's placement, failed to follow the procedures for a proper manifestation determination, failed to include required content in Student's IEP, and failed to provide adequate notice to Parents.<sup>10</sup> This claim is legally sufficient.

Second, Student alleges District failed to assess Student in all areas of suspected disability, thereby denying Student a FAPE. Student provides sufficient facts relating to the allegation that District failed to assess his needs in the areas of social-emotional functioning, communication, sensory processing, academics, behavioral functioning, work completion, attention, autistic-like behaviors, assistive technology, fine motor, recreation and other processing deficits. This claim is legally sufficient.

Third, Student alleges District's procedural and assessment violations described in the first and second issues, resulted in a denial of FAPE for the 2005-2006, 2006-2007, 2008-2009, and 2009-2010 school years. Student alleges and incorporates by reference facts relating to the first two issues. Therefore, Student provides sufficient facts relating to this claim and the claim is legally sufficient.

The facts alleged in Student's complaint are sufficient to put the District on notice of the issues forming the basis of the complaint. Student's complaint identifies the issues and adequate related facts about the problems to permit District to respond to the complaint and participate in a resolution session and mediation. Accordingly, Student's three issues are legally sufficient.

A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (20 U.S.C. §1415(b)(7)(A)(ii)(IV).) Student's proposed resolutions request independent educational evaluations (IEEs), reimbursement for past IEEs, compensatory education, placement order, private or nonpublic school costs, therapy, transportation, and various other reliefs. Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

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only determination to be made upon the filing of a NOI is the sufficiency of the complaint on its face. District's contentions may form the basis for an affirmative defense at hearing, or may be addressed in a properly filed motion to dismiss.

<sup>10</sup> Student's complaint did not challenge the substantive aspect of the manifestation determination.

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: October 4, 2010

/s/

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TROY K. TAIRA  
Administrative Law Judge  
Office of Administrative Hearings