

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. 2010100440

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On October 7, 2010, Student filed a Due Process Hearing Request¹ (complaint) naming Torrance Unified School District (District). On October 22, 2010, the 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.² 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).

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

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).

² 20 U.S.C. § 1415(b) & (c).

³ 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.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 Administrative Law Judge.⁷

DISCUSSION

In its NOI, the District asserts that Student’s complaint is insufficient in several ways. First, the District contends that Student has asserted a need for intensive speech and language therapy, but he fails to provide facts supporting this allegation, or a description of what he means by this term. Second, the District claims that although Student alleges that he requires daily specialized academic instruction, he does not allege “academic deficits,” or claim that the District’s offer in this regard is “deficient.” Finally, the District argues that Student’s listing of deficient goals in his individualized education program (IEP) for both the 2009-2010 and 2010-2011 school years is insufficient because Student states “Parents’ specific concerns about goal development include, but are not limited to, the following” before listing some specific goals that he claims are deficient. The District argues that it should not be required to determine if any other goals are deficient in each of the referenced IEPs.

Although the District stated specific grounds for why it believes Student’s complaint is insufficient, the complaint was reviewed in its entirety to determine its sufficiency. The first issue in Student’s complaint is that the District failed to assess Student in all areas of suspected need. Specifically, Student contends that a behavioral assessment referral in June

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).

2010 was untimely as Student had maladaptive behaviors in each of the two preceding school years that were not appropriately addressed by the District. In addition, Student claims that the District conducted an occupational therapy (OT) assessment in May 2010 that did not meet statutory requirements. Student provides facts and law to support these claims.⁸ This issue is sufficiently pled.

Student's second issue is that the District did not provide him with measurable annual goals in his IEPs for both the 2009-2010 and the 2010-2011 school years.⁹ Student then describes specific goals for each of the two school years and explains why he believes each goal is "vague and difficult to measure." This issue is sufficiently pled.

Although there may be other goals that Student also believes are inadequate for each of these school years, the District has been put on notice that Student questions goals in IEPs for both school years. Because Student filed the complaint, the District is required to hold a resolution session within 15 days from the date the complaint was filed. (Ed. Code § 56501.5.) A due process hearing cannot be held until the parties have participated in this resolution session, unless both parties waive the resolution session. (Ed. Code § 56501.5, subd. (b).) The District will have the opportunity to determine whether Parents object to any other goals at this session. It is not necessary for the District to be given prior notice of each and every goal questioned by Parents in order to have a meaningful resolution session. The second issue is sufficiently pled.

The third issue in Student's complaint is the District failed to offer Student a FAPE for both the 2009-2010 and 2010-2011 school years because: 1) it failed to adequately and appropriately address Student's maladaptive behaviors during the 2009-2010 school year; 2) it failed to provide him with "trained and qualified aide support" after Parents requested a one-to-one aide in February 2010; 3) it "failed to provide him with adequate social skills support" and social skills goals for both school years; and 4) it "failed to provide [him] with adequate OT support" for the 2010-2011 school year. Supporting facts and citations to law follow the statement of each sub-issue. Student's third issue is sufficiently pled.

Student's fourth issue is that Student was denied a FAPE because his parents were denied meaningful participation in the IEP process, because the District failed to implement data collection pursuant to a February 2010 IEP amendment, and because the District refused to allow Student's paraeducator to attend IEP meetings after parents requested this in January 2010. Again, Student provides factual allegations in support of this issue. Accordingly, Student's fourth issue is sufficiently pled.

⁸ No finding is made as to the accuracy of Student's references to governing law.

⁹ Although the heading for this issue in the complaint refers to "the 2009-2010 and 2009-2010 school years," the following recitation of supporting facts makes reference to IEP goals for both the 2009-2010 and 2010-2011 school years. Therefore, one can infer that one of the heading references to the 2009-2010 school is a typographical error.

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 problem to permit District to respond to the complaint and participate in a resolution session and mediation.

In his complaint, Student describes seven separate "supports and services [that he needs] to access an education." These services include "specialized academic instruction" and "intensive, individualized speech and language therapy." However, this information is provided only in a section of the complaint entitled "Student Background," and the introduction to Student's third issue. Student has not claimed that the District failed to provide him with either the specialized academic instruction or the speech and language services that he required. In addition Student does not ask for either service as part of his proposed resolutions. Therefore, Student's statement of the four claims is sufficient.

Student's proposed resolutions request an independent social skills assessment, an independent occupational therapy assessment, a one-to-one nonpublic agency aide trained in applied behavior analysis methodologies for the entire school day, "[t]he development of an appropriate IEP," and compensatory education. 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).) The proposed resolutions stated in Student's complaint are well-defined. Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

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 28, 2010

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings