

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. 2010100707

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On September 29, 2010, Parent, on behalf of Student filed a Due Process Hearing Request<sup>1</sup> (complaint) naming Torrance Unified School District (District).

On October 21, 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.<sup>2</sup> 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).

The complaint is deemed sufficient unless a party notifies the Office of Administrative Hearings (OAH) and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements.<sup>3</sup>

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,

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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(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).

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>

OAH does not have jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), also known as the Americans with Disabilities Act (ADA), and Section 1983 of Title 42 United States Code, also known as the Civil Rights Act of 1964 (Civil Rights Act).

## DISCUSSION

Student’s complaint was filed on September 29, 2010. The District indicates in its NOI that it received Student’s complaint on October 1, 2010. The District’s NOI was dated, filed with OAH, and served on Student on October 21, 2010, which is more than 15 days after it received Student’s complaint. Technically, the District’s NOI was not filed within the statutorily required timeline. However, by sworn declaration, the District has established

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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).

that it did not know that a complaint had been filed with OAH until it received the scheduling order on October 18, 2010. Additionally, the District established that the complaint it received from Student was not identical to the complaint filed with OAH. The District was sent a copy of the complaint filed with OAH on October 19, 2010. Accordingly, the District's NOI was timely filed with OAH.

Student completed an OAH Complaint form in handwriting, and lists five claims on that form. Attached to that complaint is a typewritten document that lists six claims, some of which are not made in the handwritten form and vice versa. Four exhibits are also attached, as well as a "Declaration" signed by Student.

Student alleges that he was physically assaulted at a Junior Reserves Officer Training Corps (JROTC) camp by fellow JROTC cadets. As the result of this alleged assault and its aftermath, he alleges violations of the California Penal Code, the ADA, the Civil Rights Act of 1964, the United States Constitution, and possibly other state or federal laws. He does not allege any violation of the Individuals with Disabilities Education Act (IDEA).

As discussed above, a party against whom a complaint is filed is entitled to know the basis of each claim and the nature of the specific allegations being made against it, with respect to each issue or problem, so that the party may be able to prepare a response, prepare for a resolution meeting, or prepare a defense for hearing. The typewritten document states that "[Student] has been entitled since age 6 by Defendants to both [Individualized Education Program] IEP's, Special Education classes and Modification of school work." However, neither document, nor the attachments, establish any claim under the IDEA, and OAH only has jurisdiction over IDEA claims. The allegations in Student's complaint do not establish IDEA claims. Accordingly, Student's complaint is found to be insufficient.

If Student can identify any claims regarding his identification, evaluation, or educational placement, or the provision of a FAPE, he may submit an amended complaint. The amended complaint must provide information concerning the nature of Student's disability, and whether or not the District has assessed for, or identified that disability. Further, if Student has an IEP, the amended complaint must provide the date of that IEP, and information as to whether or not that IEP is meeting his unique needs, being appropriately implemented, and providing him with a FAPE. In other words, Student must describe with some particularity why his or Parent's rights, pursuant to the IDEA, are being violated by the District.

At the parent's request, a mediator may be appointed to assist a Student who does not have an attorney, to identify issues and proposed resolutions for hearing. (Ed. Code, § 56505, subd. (e)(6).) If Student's parent would like the services of a mediator to assist in this matter, he should make that request to OAH.

ORDER

1. Student's complaint is insufficiently pled under title 20 United States Code section 1415(c)(2)(D).
2. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).<sup>9</sup>
3. The amended complaint shall comply with the requirements of title 20 United States Code section 1415(b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.
4. If Student fails to file a timely amended complaint, the complaint will be dismissed.
5. All dates previously set in this matter are vacated.

Dated: October 25, 2010

/s/

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REBECCA FREIE  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>9</sup> The filing of an amended complaint will restart the applicable timelines for a due process hearing.