

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. 2011030785

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On June 14, 2011, Abraham Apraku, Attorney for Student, filed an Amended Due Process Hearing Request¹ (amended complaint) naming the Torrance Unified School District (District). On June 29, 2011, Sharon A. 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.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

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 contains adequate related facts about the problem to permit District to respond to the complaint and participate in a resolution session and mediation. Student’s amended complaint addresses the deficiencies raised in the May 31, 2011 order that granted the District’s NOI to Student’s May 12, 2011 complaint.

Issue No. 1 alleges that District failed to provide Student with a FAPE during the 2009-2010 and 2010-2011 school years, by failing to provide appropriate goals and services. This issue is sufficient because it directs District to a specific portion of the IEPs for the school years identified.

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).

Issue No. 2 alleges that District denied Student a FAPE for the 2009-2010 school year, by failing to make a clear and concise written offer of services to Mother. This issue is sufficient because it specifies the year and the problem to allow District to respond.

Issue No. 3 alleges that District denied Student a FAPE for the 2001-2010 and 2010-2011 school years by failing to appropriately assess Student for autism and by failing to provide an appropriate program for Student. This issue is sufficient because it directs District to the problem and the time frame that the problem occurred.

Issue No. 4 alleges that District denied Student a FAPE during the 2009-2010 and 2010-2011 school years by failing to provide appropriate goals and services to address Student's functional needs. This issue is sufficient because it identifies the time period and the problem that allows District to respond.

Issue No. 5 alleges that District denied Student a FAPE during the 2009-2010 and 2010-2011 school years by failing to provide appropriate goals and services in the area of language. This issue is sufficient because it identifies the time period and the specific problem to allow District to respond.

Issue No. 6 alleges that District denied Student a FAPE during the 2009-2010 and 2011-2011 school years by failing to provide appropriate goals to address Student executive functioning deficits. This issue is sufficient because it identifies the time period and the specific problem to allow District to respond.

Student's amended 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. Therefore, Student's amended complaint is legally sufficient.

Student's proposed resolution requests include a request for placement in a non-public school, that District revise his IEP to provide him with individualized forty hour per week applied behavioral analysis (ABA) program for autism that includes ABA therapy, speech and language therapy, occupational therapy, social skills training and in-home training all monitored by a board certified behavior analyst specializing in autism. Additionally, Student requests that District fund a year round ABA program that included extended school year services. 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 resolution stated in Student's complaint is 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: July 1, 2011

/s/

MICHAEL G. BARTH
Administrative Law Judge
Office of Administrative Hearings