

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

Student filed an amended due process hearing request (complaint)<sup>1</sup> on May 12, 2011, naming the Torrance Unified School District (District). On May 27, 2011, the District timely 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).

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>3</sup> These requirements prevent vague and confusing complaints, and promote fairness by providing the

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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(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.<sup>4</sup>

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”<sup>5</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>6</sup> Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.<sup>7</sup>

## DISCUSSION

Student’s complaint contends that the individualized education plans (IEP’s) developed for him by the District for school years 2009-2010 and 2010-2011 failed to offer him a free appropriate public education (FAPE). However, Student’s complaint is not pled sufficiently as to either school year in question.

Addressing the IEP dated October 8, 2009, Student alleges that it failed to take into account his academic and social needs. Student states that he was aggressive with other children at school and that he had anxiety symptoms, such as screaming during a school assembly when a loud bell sounded. Student also alleges that his school placement under this IEP placed him in unnecessary danger and caused him to pose a threat to other students. However, Student’s complaint fails to state exactly what his specific academic and social needs were, why those needs were not addressed by the District, and what type of placement and/or services Student required in order for his needs to be addressed. Further, Student fails to state how the IEP placed him in danger and how and why he posed a threat to other students in a manner that was not adequately addressed by the District through his IEP. Student’s Issues one and two are therefore insufficient as pled because it is unclear what

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<sup>4</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>5</sup> Sen. Rep. No. 108-185, *supra*, at p. 34.

<sup>6</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>7</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).

exactly were the insufficiency in his program during the 2009-2010 school year and what Student contends the District failed to provide him.

Student alleges that the following year, the District failed to offer him a FAPE in the IEP dated October 14, 2010, because the placement proposed at Calle Mayor Middle School, did not meet his needs. Student states that the placement offered him mental health counseling services, speech and language services, a social/emotional skills program, and counseling services through the Department of Mental Health. Student contends that he required a non-public school setting, but other than stating that his psychotic episodes had increased, Student does not state why the proposed placement would not meet his needs.

It is thus unclear from Student's complaint whether he contends that his IEP for the 2010-2011 school year was deficient solely because it did not adequately address his mental health needs, or if there were other aspects of the offered program that were inappropriate. Student's complaint describes his mental health concerns, such as his psychotic episodes and his aggression with other children, but his complaint fails to give any description of how Student was struggling academically, what his academic needs are, and what the District should have been doing to address those needs.

Therefore, Student's complaint is deficient as to his issues one and two. It is also deficient as to his issues three and four except to the extent that he contends that his IEP placement for the 2010-2011 school year was inappropriate because it failed to address his mental health needs. If Student's intent is to allege that the District also failed to address any other of his areas of unique needs such as in the area of academics or other related services, Student must amend his complaint and include specific information that describes what those needs are and why the District's IEP's failed to address them.

However, the District's contention that Student's complaint fails to propose appropriate resolutions is unpersuasive. 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 are not specific, particularly to the extent that Student fails to define or describe the "suitable educational program" he wishes OAH to order the District to provide him. However, Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time he filed his complaint. It will be Student's burden at the due process hearing to prove why the District's IEP's were not appropriate and what type of program he believes he requires in order to receive a FAPE.

## ORDER

1. To the extent Student contends in his issues three and four that the District did not provide him a FAPE during school year 2010-2011 because the placement it offered failed to address Student's mental health needs, Student's complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

2. Student's issues one and two are insufficiently pled under Title 20 United States Code section 1415(c)(2)(D). To the extent that Student intended in his complaint to allege in issues three and four that his IEP was inadequate for reasons other than because the placement offered did not appropriately address Student's mental health needs, Student's complaint is also insufficiently pled.

3. Student shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).<sup>8</sup>

4. 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.

5. If Student fails to file a timely amended complaint, the hearing shall proceed only as to whether his IEP for school year 2010-2011 failed to offer him a FAPE because it did not adequately address Student's mental health needs.

Dated: May 31, 2011

/s/

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DARRELL LEPKOWSKY  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>8</sup> The filing of an amended complaint will restart the applicable timelines for a due process hearing.