

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. 2011040915

ORDER DENYING NOI AND  
DETERMINING SUFFICIENCY OF  
DUE PROCESS COMPLAINT

On April 25, 2011 Student filed a Request for Mediation and Due Process Hearing<sup>1</sup> (complaint) naming District. On May 10, 2011 District timely filed a Notice of Insufficiency (NOI) as to portions of Student's complaint. For the reasons discussed below, the complaint is sufficient.

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 alleges that District denied Student a FAPE from April 2009 through September 2010. Student’s claims are delineated in Issues B(1)-(6) and C(1)-(6), and D, E, and F. Student also offers proposed resolutions.

First, District contends that Student’s Issues D and E allege violations of Title II of the Americans with Disabilities Act (Title II) and Section 504 of the Rehabilitation Act of 1973 (Section 504) which are not related to IDEA. Student alleges in Issues D and E that District’s conduct in denying her a FAPE in several alleged ways also resulted in violations of Title II, and Section 504. An NOI addresses only whether the complaint is sufficiently pleaded to give District adequate notice of Student’s claims, which it does here by referencing alleged violations of FAPE associated with the claims in D and E. District may challenge the merits of Issues D and E in a motion to dismiss or as an affirmative defense.

District next argues that Issues B(1)(d) and C(1)(b) are vague and ambiguous. Student alleges in Issue B(1)(a)-(d) that District failed to provide Student with a FAPE from April 22, 2009 through extended school year 2009, and in C(1)(a)-(d) that District failed to

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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).

provide Student with a FAPE from the beginning of the 2009-2010 school year through September 30, 2010. Student claims that, during those time frames, District inappropriately used emergency interventions in relation to Student's behaviors instead of conducting a behavior assessment and creating an appropriate behavior support plan with necessary behavior supports that addressed all of Student's behaviors. Student's Issues (B)(1) and C(1) when read in their entirety are sufficiently pleaded to put District on notice of what the claims are and to enable District to participate in a resolution session and mediation.

District argues that Student's Issue B(2) is non-specific as to what behavior supports were required. Student claims in Issue B(2) that from April 22, 2009 through extended school year 2009 District denied her a FAPE because it did not refer her under AB3632 to the Los Angeles County Department of Mental Health or provide her with appropriate mental health services, which resulted in hindrance of her social development. Issue B(2) is sufficiently pleaded to put District on notice of what the claims are and to enable District to participate in a resolution session and mediation.

District also challenges Issues B(5) and C(5) in which Student claims that, from April 22, 2009 through September 30, 2010, District denied her a FAPE by failing to provide her with appropriate assistive technology. Student alleges that she had needs in the areas of writing skills that resulted in her not meeting her writing goals, and that her scores decreased from May 2009 to December 2010. Issues B(5) and C(5) are sufficiently pleaded to put District on notice of what the claims are and to enable District to participate in a resolution session and mediation.

The remainder of Student's complaint, which District does not challenge, is also sufficiently pleaded.

#### 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: May 12, 2011

/s/  
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ADRIENNE L. KRIKORIAN  
Administrative Law Judge  
Office of Administrative Hearings