

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. 2011110024

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On October 31, 2011 Craig Liu, Attorney for Student filed a Due Process Hearing Request<sup>1</sup> (complaint) naming the Torrance Unified School District (District).

On November 15, 2011, Sharon A. Watt, Attorney for District filed a Notice of Insufficiency (NOI) as to Student's complaint.

On November 17, 2011, Student filed an opposition to District's NOI.

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

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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).

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>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 Individuals with Disabilities Education Act 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

The facts alleged in Student’s complaint are sufficient to put 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 mediation. The issues are discussed individually as follows:

*Issue No. 1:* Did District deny [Student] a FAPE by refusing to conduct assessments in all areas of suspected disability after a referral/request for assessment?

This issue presents a procedural claim. In her statement of facts Student discloses that an email was sent to Ms. Garcia on May 19, 2011, and Ms. Garcia responded on May 20, 2011, stating that there would be no time for an assessment. The issue is sufficiently pled to permit District to respond to the complaint and participate in a resolution session and mediation.

*Issue No. 2:* Did District deny [Student] a FAPE for the 2009-2010 school year through present by failing to fulfill its child find obligations?

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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).

Student present facts related to Student's performance and Parent's notifications to District. The issue is sufficiently pled to permit District to respond to the complaint and participate in a resolution session and mediation.

*Issue No. 3:* Did District deny [Student] a FAPE by failing to provide prior written notice of why it refused to conduct assessments after a request/referral was made?

Here Student presents her statement of facts Student discloses that an email was sent to Ms. Garcia on May 19, 2011, and Ms. Garcia responded on May 20, 2011, stating that there would be no time for an assessment. Additionally she refers to an email to Mr. Drasner on May 27, 2010 asking for help in the form of an IEP accommodation. The issue is sufficiently pled to permit District to respond to the complaint and participate in a resolution session and mediation.

Therefore, Student's statement of the Issue No. 1, No. 2 and No. 3 present claims that are legally sufficient.

Student's proposed resolutions request: intensive counseling and educational therapy; compensatory education in the form of one to one educational therapy from a nonpublic agency; intensive mental health counseling; continued education in a nonpublic school; and reimbursement to Parent for independent assessments conducted for Student. 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).) Student has met the statutorily required standard of stating a resolution to the extent known and available to her 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: November 18, 2011

/s/  
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MICHAEL G. BARTH  
Administrative Law Judge  
Office of Administrative Hearings