

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

v.

TORRANCE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012020755

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On February 17, 2012, Student filed a Due Process Hearing Request¹ (complaint) naming the Torrance Unified School District (District).

On March 2, 2012, the District timely filed a Notice of Insufficiency (NOI) as to Student's complaint.²

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.³ 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,

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 On March 5, 2012, Student filed a notice of intent to file a response to the District's NOI by March 7, 2012, and requested that OAH defer ruling on the NOI until after she filed her response. There is no mechanism under federal or state law for the filing of a response to an NOI, nor is a response necessary or warranted. Either a complaint is legally sufficient on its face or it is not. In any case, OAH has determined that Student's complaint is sufficient. She has therefore suffered no prejudice by the issuance of this order prior to the filing of her proposed response.

³ 20 U.S.C. § 1415(b) & (c).

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.⁴ 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.⁵

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁶ 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.⁷ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁸

DISCUSSION

Student’s complaint is over 40 pages long. The first 20 or so pages give a detailed description of Student’s challenges to date, her past and present educational placements, and an overview of the special education problems she contends were not addressed by the District. The second half of Student’s complaint identifies the specific allegations she makes against the District. Specifically, Student contends that her individualized education programs (IEP’s) dated January 14, 2010, and January 26, 2011, failed to provide her with a free appropriate public education because the District failed to:

Assess Student in all areas of suspected disability, including Student’s educational, social emotional, and behavioral needs;

⁴ 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

⁵ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁶ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁷ *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.].

⁸ 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).

Conduct a functional analysis assessment and develop a behavioral intervention plan for her;

Develop appropriate present levels of performance and appropriate goals;

Address Student's mental health, educational, psychological, self-help, adaptive, and career needs;

Provide supports or services to address Student's inability to get to school on time;

Provide an appropriate transition plan;

Meet its procedural obligations during the IEP process.

The District contends that Student's complaint is insufficient because it raises issues outside of the two-year statute of limitations and because Student does not plead her issues with sufficient specificity. The District's arguments are not persuasive. The fact that a complaint alleges violations outside of the statute of limitations does not mean that the issues raised do not contain sufficient supporting information. Additionally, Student's complaint is substantively sufficient. In this case, between the 20-plus pages of Student's factual narrative and the information contained in the 20 pages devoted to Student's specific allegations, the District has been given more than enough information to put it on notice of issues forming the basis of the complaint. Student's complaint identifies the issues and adequate related facts about the problem to permit the District to respond to the complaint, to participate in a resolution session and mediation, and to defend against the allegations at hearing.

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: March 6, 2012

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings