

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

TORRANCE UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2012050982

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On May 23, 2012, Student filed a Due Process Hearing Request<sup>1</sup> (complaint) naming the Torrance Unified School District ( District) as respondent. On May 31, 2012, the District timely filed a Notice of Insufficiency (NOI) as to Student's complaint. The Office of Administrative Hearings (OAH) issued an order on June 4, 2012, finding Student's complaint insufficient in its entirety. In this order, OAH informed Student that his parents could request assistance from an OAH mediator in the preparation of an amended complaint. Student's parents did not seek this assistance but did file an amended complaint on June 6, 2012. The District filed an NOI as to Student's amended complaint (referred to herein as the FAC) on June 7, 2012. Student filed an objection to the District's NOI on June 8, 2012.

For the reasons discussed below, Student's FAC is insufficient as pled. However, Student will be given another opportunity to amend his complaint if he wishes to proceed on any other issues.

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).

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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).

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 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 (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>

Furthermore, 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).) As discussed below, the proposed resolutions stated in Student’s FAC are ill-defined. To the extent that they can be determined, the proposed resolutions are not within the jurisdiction of OAH and are thus not available to Student through a due process hearing. Student’s FAC is additionally insufficient based upon the lack of viable proposed resolutions.

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<sup>3</sup> 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

<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).

## DISCUSSION

Student's FAC lists six issues, with a general paragraph following the issues stating his proposed resolutions. However, Student's FAC again fails to allege under what category he is eligible, what his last individualized education program (IEP) provides, what the date of his last IEP is, what his unique areas of need are, and what his current IEP placement and related services are. Although Student alludes to home hospital as his current placement, he provides no supporting facts, including when he was placed in home hospital, the extent of services he received, and specifically which of the services were terminated.

Issue one alleges that Student was in special education in August of 2010. Student alleges that while on a field trip, he was the victim of a vicious hazing incident by other students. He then states he was placed on Home Hospital Instruction (HHI) because of the incident and received tutoring twice a week. Student then alleges that the District stopped his classwork about a year later without holding an IEP meeting and that Student cannot graduate because of being removed from the school program.

It is unclear when HHI instruction started and what it consisted of. It is also unclear what program was stopped and when. There is reference in Issue one to testimony given in a deposition in court proceeding stemming from the hazing incident that discusses the cessation of Student's participation in a "JROTC" program. Assuming that "JROTC" refers to Junior Reserve Officer Training Corp., there is no allegation that this program is run by the District. And, even assuming that it is a District program, there is no allegation as to how or why Student was denied a free appropriate public education (FAPE) because he was no longer permitted to participate in JROTC. Issue one is insufficiently pled because it fails to provide the District with the required notice of a description of the problem and the facts relating to the problem so that District may meaningfully prepare for and participate in a resolution session, mediation and due process hearing.

Issue two appears to allege that someone named Ron Graham did not follow state law with regard to reporting incidents of hazing. The issue alleges that Mr. Graham is a mandatory reporter but that he failed to meet his obligations to report and then investigate the hazing incident. Issue two also alleges that Mr. Graham refused to remove the instigators of the hazing incident from the JROTC program. Student cites to state law regarding the reporting of incidents and cites to JROTC regulations regarding the reporting of serious incidents. However, Student fails to state whether Mr. Graham is employed by the District and, if so, in what capacity. Significantly, Student fails to state how any of the allegations in this issue violated the federal Individuals with Disabilities Education Act (IDEA) or state special education law and how any of the actions, or lack of them, denied Student a FAPE. Issue two fails to allege any facts that identify a claim under the IDEA relating to the identification, evaluation, or educational placement of a child, including when and where the alleged hazing occurred, and how the alleged hazing impacted Student's access to his education. Issue two is insufficiently pled because it fails to provide the District with the required notice of a description of the problem and the facts relating to the problem so that

District may meaningfully prepare for and participate in a resolution session, mediation and due process hearing.

In Issue three, Student alleges that the District presented his parents with an assessment plan on January 23, 2012, but failed to include a copy of the procedural safeguards with the plan. Student further alleges that a notice of IEP sent to his parents on March 13, 2012, was not received by them until March 28, 2012, and noticed the meeting for too early in the morning at a location in the school lobby that would be accessible to other people, thereby violating Student's right to privacy. This issue is specific enough such that it provides the District with enough information to prepare for a due process resolution session, mediation or hearing. Issue three is therefore sufficient as pled. However, as discussed more fully below, Student fails to request a resolution, with regard to Issue three or any other issue in the FAC that is within the jurisdiction of OAH to order. Because Student has failed to propose a resolution that is available to him, his FAC as a whole is insufficient. The lack of a viable resolution for Issue three results in a finding that Issue three is insufficient as pled.

In Issue four, Student contends that the District failed to permit his parents to access their "children's" records. Student does not specify whether he is one of the children referenced, when the records were requested, which records were requested, and whether the District ever responded at all to the request. Student also alleges that the District failed to respond to his request for a "resolution" meeting. Student does not state when the request was made, whether the request refers to a resolution meeting pursuant to a due process filing, and, if not, how this failure relates to a denial of FAPE to him. For these reasons, Student's Issue four is insufficient.

Student's Issue five is vague and ill-defined. It appears to reiterate Issues one and three, but then cites to unrelated sections of the Education Code and the IDEA. Issue five fails to put the District on notice of the issues presented and why the alleged conduct prevented Student from receiving a FAPE. Issue five is therefore insufficient.

Issue six also merely reiterates the allegations made in Issues one and three and is similarly insufficient for the reasons described above.

Student's FAC contains a number of proposed resolutions, none of which are within the jurisdiction of OAH to grant. Student first asks OAH to conduct an investigation of the allegations of his FAC. OAH is not an investigating agency. It hears due process cases based upon evidence presented at hearing. Student also asks OAH to hold an additional state hearing to determine Student's damages under the IDEA, under the Americans with Disabilities Act, and under other non-specified state and federal laws. Student also asks for damages based upon allegations of harassment, bias, and negligence. First, OAH does not have jurisdiction in a due process hearing over anything but allegations based on the IDEA and state special education law. OAH does not have jurisdiction to remedy harassment, bias, discrimination, or negligence, except to the extent that any of those allegations are a denial of FAPE. Additionally, even in cases brought pursuant to the IDEA and state special education law, OAH has no jurisdiction to award damages to any of the parties. Student's complaint

does not request any other remedy or propose any other resolution. The complaint therefore fails to present any resolution available to Student in a due process proceeding and, as such, is insufficiently pled.

In its previous Order finding Student's initial complaint insufficient, OAH informed Student and his parents that a parent who is not represented by an attorney may request that the OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions and supporting facts that must be included in a complaint.<sup>8</sup> Student's parents did not take advantage of this assistance in formulating their FAC. Parents are again encouraged to contact OAH for assistance if they intend to again amend their due process hearing request. They may either contact OAH in writing or by telephone at (916) 263-0880.

#### ORDER

1. Student's complaint is insufficiently pled under section Title 20 United States Code 1415(c)(2)(D).

2. Student shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).<sup>9</sup>

3. 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.

4. If Student fails to file a timely amended complaint, the complaint will be dismissed.

5. All dates previously set in this matter are vacated.

Dated: June 12, 2012

/s/

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DARRELL LEPKOWSKY  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>8</sup> Ed. Code, § 56505.

<sup>9</sup> The filing of an amended complaint will restart the applicable timelines for a due process hearing.