

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. 2012090464

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On September 14, 2012, Student filed a due process hearing request¹ (complaint) naming the Torrance Unified School District (District) as the respondent.

On September 28, 2012, District 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.² 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).

The complaint is deemed sufficient unless a party notifies the Office of Administrative Hearings and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements.³

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

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 20 U.S.C. § 1415(b) & (c).

³ 20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).

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 alleges one issue in his complaint: that that District failed, in Student’s June 2010 IEP, to offer Student a FAPE for the 2010-2011 school year by failing to offer appropriate services to meet Student’s unique processing, behavior, sensory, language and social-emotional needs. Student’s needs, and the events that led up to the June 2010 IEP that constitutes the District’s offer, are described in great detail. Student seeks reimbursement for tuition incurred since he was unilaterally placed in a nonpublic school (NPS) by his parents in Fall 2010, and an order for prospective placement.

District contends that Student’s complaint is insufficient because it fails to “explain [Student’s] social-emotional functioning at [the NPS]” and because it was filed on September 14, 2012 but provides no facts that would support the tolling of the statute of limitations that would run from the June 2010 IEP.

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).

Student opposes, arguing that he has sufficiently described his unique needs and how they were not met, and that a letter from the District dated September 20, 2010 refusing to change the provisions of the June 2010 IEP will satisfy the tolling requirement.

Student has alleged specific educational needs that were not met by the District's offer. Student's complaint identifies the issues and adequate related facts to permit District to respond to the complaint and participate in a resolution session and mediation.

There is no requirement that a complaint include facts to support an exception to a respondent's possible statute of limitations defense. Instead, the IDEA only requires that the school district be provided with sufficient notice of the issues and requested remedies. Moreover, a determination of whether an exception to the statute of limitations applies requires a factual finding by the hearing officer, and is therefore is not appropriately decided on a notice of insufficiency.

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: October 2, 2012

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings