

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. 2013010615

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT BASED ON MOOTNESS

On January 22, 2013 Student filed a Due Process Hearing Request¹ (complaint), which Student mistakenly called a Notice of Objection to Plaintiff's Petition, naming Torrance Unified School District as the Petitioner, alleging violations of the Education Code and American with Disabilities Act, and requesting a change of placement.

On January 30, 2013, Student filed a new Request for Mediation and Due Process Hearing, this correctly identifying Student as the Petitioner, and District as the Respondent. OAH deems this to be a request to file an amended complaint. On February 1, District filed a Response to the January 22, 2013 complaint, a Notice of Insufficiency (NOI) as to the January 22, 2013 complaint, and an opposition to Student's January 30, 2013 filing because it requires a due process hearing.

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

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).

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.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

Here, Student filed a subsequent complaint, on January 30, 2013. District’s Notice of Insufficiency alleges the January 22, 2013 complaint is insufficient. Based on Student’s request to file an amended complaint, OAH is granting the motion to amend the complaint effective February 11, 2013, by order served simultaneous with this Order. Accordingly, District’s NOI to the January 22, 2013 complaint is moot.

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).

ORDER

1. District's Notice of Insufficiency as to the January 22, 2013 complaint is moot.
2. District retains the right to file a Notice of Insufficiency as to the January 30, 2013 complaint, deemed filed February 11, 2013, if it deems it necessary.

Dated: February 11, 2013

/s/

DEBORAH MYERS-CREGAR
Administrative Law Judge
Office of Administrative Hearings