

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. 2015050922

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On May 06, 2015, Student filed a Due Process Hearing Request¹ (complaint) naming the Torrance Unified School District.

On May 13, 2015, Torrance 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).

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.³ These requirements prevent vague and confusing complaints, and promote fairness by providing the

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(b)(7)(A)(ii)(III) & (IV).

named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.⁴

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁵ 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.⁶ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁷

DISCUSSION

The facts alleged in Student’s complaint are sufficient to put Torrance 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 Torrance to respond to the complaint and participate in a resolution session and mediation.

Torrance does not challenge the adequacy of most of Student’s allegations. These include the claims that Torrance failed to appropriately address his behavior deficits by failing to assess his behavior appropriately, failing to develop an adequate behavior support plan, and failing to offer or provide appropriate behavioral services. (See Complaint, p. 13.) The unchallenged allegations also include a variety of alleged procedural failings ranging from predetermination that Student should be placed in a nonpublic school to failing to complete identified assessments within the statutory timeline. (See Complaint, p. 17.)

Student adequately alleges that Torrance’s Functional Behavior Assessment of February 13, 2013 (which apparently governed his Behavior Support Plan after May 5, 2013,

⁴ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁵ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁶ *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.].

⁷ 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).

two years before the date the complaint was filed) was deficient in that it made recommendations of strategies that had repeatedly failed in the past.

Student also adequately alleges that Torrance's ASSISTT assessment report was deficient in its failure to mention or consider the absence of the use of positive reinforcement, including a token economy, provided for in Student's 2012 behavior support plan.⁸

Student adequately alleges that his Behavior Support Plan was not implemented after May 7, 2013. Specifics of that alleged failure are not required; the general allegation is enough to put Torrance on notice of the nature of the claim.

Student's allegations of violations of the Rehabilitation Act, the Americans with Disabilities Act, and the United States Constitution are more properly the subject of a motion to dismiss.

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.

DATE: June 1, 2015

/s/

CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings

⁸ The Complaint does not clearly set forth the time period during which the 2012 Behavior Support Plan was in place. This ruling takes no position on whether these allegations address matters within the statute of limitations.