

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. 2015071314

ORDER DENYING NOTICE OF
INSUFFICIENCY OF DUE PROCESS
COMPLAINT

On July 24, 2015, Student filed a due process hearing request¹ (complaint) naming Torrance Unified School District. On August 6, 2015, District filed a Notice of Insufficiency (NOI) as to Student's complaint. On August 7, 2015, Student filed a response to District's NOI.

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 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

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).

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.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

Student’s complaint alleges the following facts: Student’s academic performance declined because she was not receiving a FAPE during the 2014-2015 school year; as early as the 2013-2014 school year, Student had challenges with listening, following directions, working well with others, talking at appropriate times, following classroom rules and demonstrating responsibility; these challenges made it difficult for her to work attentively and cooperatively with others; by the 2014-2015 school year the challenges significantly impacted Student’s academic performance; and District did not timely respond to Student’s request for an independent psycho-educational evaluation.

The complaint identifies three issues: District denied Student a FAPE by failing to provide her with a program which gave educational benefit during the 2014-2015 school year; District failed to address Student’s attention challenges and behavioral issues which impacted her during the 2013-2014 and the 2014-2015 school years; and District untimely denied Student an independent psycho-educational evaluation ten months after Parent’s written request.

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).

The facts in the complaint are sufficient to put District on notice of the issues stated above, and provided adequate related facts about the problem to permit District to respond to the complaint, participate in a resolution session and mediation. As a remedy, Student requests District assessments in language and speech and functional behavior, an independent psycho-educational evaluation, and IEP team meetings after assessments have been concluded to determine proper goals and services for Student. Additionally, Student requests 100 hours of intensive academic instruction in reading comprehension and fluency, written expression and math, and 40 hours of compensatory counseling and behavior intervention services.

District argued that: District could not determine if assessment was an additional issue during the 2014-2015 school year; could not determine the time frame when Student alleged a functional behavior assessment should have been conducted; District could not determine whether it must defend its FAPE offers made prior to its assessment; and Student needs to specify facts beyond that which was alleged in the complaint. District's arguments are unsupported. Although Student could have organized her issues by each school year, she is not required to do so under the minimal notice requirements under the IDEA. The information sought by District is in the complaint. Student is not required to allege each issue with the level of specificity demanded by District when Student already satisfied the minimal notice requirements under the IDEA. Student properly alleged her issues and requested specific remedies.

ORDER

1. The complaint is sufficiently pled under section Title 20 United States Code 1415(c)(2)(C) and Education Code section 56502, subdivision (d)(1).
2. All mediation, prehearing conference and hearing dates in this matter are confirmed.

Date: August 7, 2015

/s/

SABRINA KONG
Administrative Law Judge
Office of Administrative Hearings