

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. 2009080608

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On August 19, 2009, Bruce Bothwell, attorney for Student, filed a Due Process Hearing Request¹ (complaint) against the Torrance Unified School District (District) as the respondent. On September 3, 2009, Sharon A. Watt, attorney for District, filed a Notice of Insufficiency (NOI) as to Student's complaint.

APPLICABLE LAW

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. (§ 1415(b)(7)(A)(ii)(III) & (IV);² Ed. Code, § 56502, subd. (c)(1).)

The complaint is deemed sufficient unless the party against whom the complaint has been filed notifies the Office of Administrative Hearings (OAH) and the other party, in writing, within 15 days of receiving the complaint, that the complaint has not met the notice requirements. (§ 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).) Section 1415(c)(2)(D) requires that the sufficiency of the complaint be evaluated based on the face of the complaint.

The party against whom the complaint has been filed is entitled to know the nature of the specific allegations being made against it, such that the party may be able to prepare a

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 All statutory citations are to Title 20 United States Code unless otherwise noted.

defense. (*Tadano v. Manney* (9th Cir. 1947) 160 F.2d 665, 667; *Hornsby v. Allen* (5th Cir. 1964) 326 F.2d 605, 608.)

DISCUSSION

Student's complaint does not have a separate factual statement and instead alleges ten claims (titled as "Problems" in the complaint), as follows:

1. Regarding the first claim for hearing, Student alleges that the District denied him a free appropriate public education (FAPE) when the District failed to have a general education teacher participate in the April 29, 2009 individualized education plan (IEP) team meeting. The District's procedural violation prevented Student's parents from meaningfully participating in Student's educational decision making process. This claim is sufficiently pled to put District on notice as to the basis of Student's claim.

2. Regarding the second claim for hearing, Student's complaint does not contain sufficient factual allegations to provide the required notice to the District of why the District did not offer a FAPE in the least restrictive environment (LRE). Student's complaint fails to provide any factual basis for why the District's offer was not FAPE in the LRE for Student or why the alternative proposed placement by Student was FAPE in the LRE.

3. Regarding the third claim for hearing, Student's complaint does not contain sufficient factual allegations to provide the required notice to the District regarding why the District's proposed placement for 2009-2010 school year (SY) was not appropriate. As with Problem 2, the complaint fails to provide any factual basis for why the District's offer for the SY is not a FAPE because Student does not explain why he should be retained in preschool and not attend the District's proposed kindergarten class.

4. Regarding the fourth claim for hearing, Student's complaint does not contain sufficient factual allegations to provide the required notice to the District of why the District's offer of behavior support services is not appropriate. This claim fails to identify why Student requires a one-to-one aide to receive a FAPE.

5. Regarding the fifth claim for hearing, Student's complaint does not contain sufficient factual allegations to provide the required notice to the District of why Student requires home based services on a year round basis to receive a FAPE and to address his unique needs. The claim fails to identify a factual nexus between the home services Student believes constitute a FAPE and the part of District's offer or lack of offer of placement and services with which Student disagrees.

6. Regarding the sixth claim for hearing, Student's complaint does not contain sufficient factual allegations to provide the required notice to the District of why Student requires two hours per week of individual speech therapy and one hour per week of group speech therapy. Student's complaint fails to provide a factual basis for Student's proposed

frequency, duration and type of speech therapy as constituting a FAPE because Student does not describe his speech and language deficits.

7. Regarding the seventh claim for hearing, Student's complaint does not contain sufficient factual allegations to provide the required notice to the District of what are the areas of need in which the District failed to offer developmentally appropriate or demanding enough goals and objectives. The claim fails to provide a factual basis of why the District's goals and objectives are not developmentally appropriate. The claim fails to identify whether the District addressed all areas of need and if there is a disagreement on the goals themselves, or if there are areas of need in which the District failed to draft any goals and objectives.

8. Regarding the eighth claim for hearing, Student's complaint does not contain sufficient factual allegations to provide the required notice to the District of Student's deficits in the areas of motor deficits and sensory processing, and why he requires occupational therapy services to receive a FAPE.

9. Regarding the ninth claim for hearing, Student's complaint does not contain sufficient factual allegations to provide the required notice to the District of how the District failed to assess Student in all areas of suspected disability. The complaint does not provide any factual allegations regarding what assessments the District conducted during the relevant period, what the assessments showed and which areas of suspected areas of disability the District failed to assess.

10. Regarding the tenth claim for hearing, Student's complaint does not contain sufficient factual allegations to provide the required notice to the District because Student does not describe what was the District's offer of services for the extended school year, why it was not an offer of FAPE or why the alternative level of service stated by the Student constitutes a FAPE.

The complaint fails to set forth what the District's offer of placement and services was in the April 29, 2009 IEP for the remainder of SY 2008-2009, for the extended school year or for SY 2009-2010. It fails to provide sufficient facts that relate to the problems asserted in claims number two through ten of the complaint.

As discussed above, a respondent is entitled to know the basis of each claim and the nature of the specific allegations being made against it, with respect to each issue or problem, so that the respondent may be able to prepare a response, prepare for a resolution meeting, or prepare a defense for hearing. Student's complaint fails to provide this notice.

Challenges to proposed resolutions.

Student's proposed resolutions request placement in a private regular education preschool; support from a one-to-one trained aide, with supervision from a non-public agency; two hours per week of individual and one hour per week of group speech therapy

provided by a non-public agency; a home based behavioral program of fifteen hours per week provided by a non-public agency; reimbursement for a private assessment; reimbursement for privately provided educational services; and, compensatory education. The complaint, however, does not have a proposed resolution for the alleged failure to provide occupational therapy.

A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (§1415(b)(7)(A)(ii)(IV).) The proposed resolutions stated in Student's complaint are sufficiently defined to provide the District with the required notice. Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time. If Student seeks a particular resolution for the alleged denial of occupational therapy, the burden is on Student to define a resolution in any amended complaint Student may file consistent with the order below.

ORDER

1. Pursuant to section 1415(b)(7)(A)(ii), "Problem One" of Student's complaint is sufficient.
2. Pursuant to section 1415(c)(2)(D), "Problem Two" through "Problem Ten" of Student's complaint are insufficiently pled.
3. Pursuant to section 1415(c)(2)(E)(i)(II), Student shall be permitted to file an amended complaint.³
4. The amended complaint shall comply with the requirements of section 1415 (b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.
5. If Student fails to file a timely amended complaint, the hearing shall proceed only on the claim titled "Problem One".

Dated: September 8, 2009

/s/

BOB VARMA
Administrative Law Judge
Office of Administrative Hearings

³ The filing of an amended complaint will restart the applicable timelines for a due process hearing.