

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. 2010041133

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On April 21, 2010, Student filed a Due Process Hearing Request¹ (complaint) naming Torrance Unified School District (District) as respondent.

On May 6, 2010, 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 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 named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.⁴

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)

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

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 ALJ.⁷

DISCUSSION

Student alleges six claims in his complaint, stating that District denied him a free and appropriate public education by: (1) failing to provide Student with an appropriate educational program at Student’s annual IEP meeting in November 2009, that included appropriate behavior services, individual instruction, and a full-time one-on-one aide; (2) failing to offer Student a placement in the least restrictive environment in the November 2009 IEP meeting, such as a full time collaborative class; (3) predetermining Student’s aide support services prior to the November 2009 IEP meeting; (4) failing to clearly indicate, at a February 24, 2010 amendment meeting, its intention to not allow Student to attend a collaborative preschool class with an one-on-one aide; (5) failing to provide Student, at a February 24, 2010 amendment meeting, continued support of a one-on-one aide in the collaborative preschool classroom; and (6) failing to offer Student an appropriate extended school year program that included one-on-one aide support and behavior services. The facts alleged in Student’s complaint are sufficient to put the District on notice of the issues forming the basis of the complaint. Student’s complaint identifies the issues and provides adequate related facts about the problem to permit District to respond to the complaint and participate in a resolution session and mediation. Therefore, Student’s statement of the six claims is sufficient.

One of Student’s proposed resolution requests reimbursement for private school tuition. 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 resolution stated in Student’s complaint is not well-defined, as there are no facts in the complaint alleging that Student attended private school. However, Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

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).

ORDER

1. The complaint is sufficient under section 1415(b)(7)(A)(ii).
2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: May 10, 2010

/s/

CARLA L GARRETT
Administrative Law Judge
Office of Administrative Hearings