

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. 2010080028

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On July 27, 2010, Student, through her holder of educational rights, filed a Due Process Hearing Request¹ (complaint) naming the Torrance Unified School District (District). On August 11, 2010, the District timely 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 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’s complaint contains three issues. The District does not dispute the sufficiency of Issue three. However, the District contends that Issues one and two are insufficient first because they appear duplicative of each other and second because there is no factual basis for either issue.

Student’s Issue one poses the question of whether the District is required to pay for the psycho-educational independent educational evaluation (IEE) requested by the holder of Student’s educational rights. Issue two poses the question of whether the District is required to pay for a psycho-educational IEE. In the factual background of her complaint, Student relates that the District administered a psycho-educational evaluation to her on or about May 21, 2009. Thereafter, beginning on March 9, 2010, and culminating with a letter from Student’s legal representative on June 25, 2010, the holder of Student’s educational rights requested an IEE because she disagreed with the evaluation administered by the District. Student acknowledges that while the District originally declined to fund the requested IEE, it ultimately agreed to do so on July 1, 2010, proposing three potential evaluators to administer the IEE. Student responded that she wished Dr. Mitchel Perlman to conduct the IEE. The District agreed to contract with Dr. Perlman, but indicated to Student that it would only pay a maximum of \$1200 for the IEE. Student’s legal representative contacted other evaluators, including some on the District’s original list, who indicated that they charge anywhere from \$1500 to \$3,500 for a psycho-educational evaluation.

Although Student’s Issues one and two appear duplicative, that fact alone does not make them insufficient. However, the District raises a pertinent point in its NOI concerning these two issues. Since Student acknowledges that the District has agreed to fund an IEE for her with her assessor of choice, on the face of the complaint there does not appear to be any facts in controversy. Nowhere in Student’s complaint does she state what Dr. Perlman

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).

charges for administering a psycho-educational evaluation or that he will not accept a lesser amount if the District's written policies do not permit payment of his customary fees. Issues one and two therefore fail to state sufficient facts supporting the claims made and thus prevent the District from knowing against what they are defending. Issues one and two are therefore insufficient as presently plead.

ORDER

1. Issue three of Student's complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. Issues one and two of Student's complaint are insufficiently pled under title 20 United States Code section 1415(c)(2)(D).
3. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).⁸
4. The amended complaint shall comply with the requirements of title 20 United States Code 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 Issue three of her complaint.

Dated: August 16, 2010

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings

⁸ The filing of an amended complaint will restart the applicable timelines for a due process hearing.