

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

TORRANCE UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2011040429

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On April 12, 2011, Student filed a Due Process Hearing Request<sup>1</sup> (complaint) against the Torrance Unified School District (District). On April 26, 2011, the 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.<sup>2</sup> 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.<sup>3</sup> These requirements prevent vague and confusing complaints, and promote fairness by providing the

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<sup>1</sup> 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).

<sup>2</sup> 20 U.S.C. § 1415(b) & (c).

<sup>3</sup> 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.<sup>4</sup>

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”<sup>5</sup> The pleading requirements should be liberally construed in light of the broad remedial purposes of the Individuals with Disabilities Education Act and the relative informality of the due process hearings it authorizes.<sup>6</sup> Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.<sup>7</sup>

## DISCUSSION

Student’s complaint contains six issues for hearing, alleging that that the District’s is not complying with the parties’ settlement agreement, denied Parents access to Student’s records, not complying with medical orders and failed to inform Parents of changes to Student’s individualized educational program (IEP).

In the first issue, Student asserts that the District is denying Student a FAPE by failing to comply with the parties’ settlement agreement because the District is not providing the required aide. The complaint contains sufficient allegations as to District’s purported failure to comply with the settlement agreement, which denied Student a FAPE. Accordingly, this issue is sufficiently pled.

In Issue 2, Student asserts that the District denied him a FAPE by changing his IEP without Parents’ consent. The complaint does not contain sufficient allegations how the District changed Student’s IEP and when this occurred. Accordingly, this issue is insufficiently pled.

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

<sup>5</sup> Sen. Rep. No. 108-185, *supra*, at p. 34.

<sup>6</sup> *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.].

<sup>7</sup> 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).

Regarding Issue 3, Student asserts that the District denied him a FAPE by refusing Parents access to his educational records. The complaint does not contain sufficient allegations as to when the District denied Parents access, and how the District's conduct denied Student a FAPE. Accordingly, this issue is insufficiently pled.

In Issue 4, Student asserts that the District denied him a FAPE by not complying with his doctor's orders. The complaint does not contain sufficient allegations as to when or if the District received the doctor's orders, what the orders required, and how the District failed to comply with the orders. Accordingly, this issue is insufficiently pled.

Regarding Issue 5, Student asserts that the District denied him a FAPE, without any further specifics. Therefore, the complaint does not contain sufficient and this issue is insufficiently pled.

Finally, in Issue 6, Student asserts that the District denied him a FAPE by attempting to force Parents to waive their rights. The complaint does not contain sufficient allegations about the rights that the District attempted to have Parents waive, and when this occurred. Accordingly, this issue is insufficiently pled.

Issue 1 is sufficiently pled to put the District on notice as to the basis of Student's claims to permit the District to respond to the complaint and participate in a resolution session and mediation.

With regard to Issues 2 through 6, Student fails to allege sufficient facts supporting these claims to put the District on notice, and therefore these claims are insufficient.

Student's second proposed resolution requests that the District pay for Student's medical care caused by the District's failure to provide with an aide pursuant to the settlement agreement. A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (20 U.S.C. §1415(b)(7)(A)(ii)(IV).) The proposed resolution stated in Student's complaint is not within the jurisdiction of the Office of Administrative Hearings to order, and therefore it is stricken.

Pursuant to Education Code section 56505, subdivision (e)(6), a parent who is not represented by an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. If Parents request the assistance of a mediator in identifying the issues, Parents should contact OAH immediately in writing.

## ORDER

1. Issue 1 of Student's complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).

2. Issues 2 through 6 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).<sup>8</sup>

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 1 in Student's complaint.

Dated: April 29, 2011

/s/

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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings

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