

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. 2011050312

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On May 02, 2011, Student filed a Due Process Hearing Request¹ (complaint) naming Torrance Unified School District (District) as respondent. District filed a Notice of Insufficiency (NOI) on May 17, 2011.

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 Administrative Law Judge.⁷

DISCUSSION

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 adequate related facts about those issues to permit District to respond to the complaint and participate in a resolution session and mediation. The issues stated and supported by factual allegations are:

1. Did District deny Student a free appropriate public education for the 2009-2010 school year, extended school year (ESY) 2010 and 2010-2011 school year by:
 - a. failing to offer an appropriate educational placement;
 - b. failing to offer a placement in the least restrictive environment;
 - c. failing to offer sufficient ABA behavior support in the classroom;
 - d. failing to provide an adequate home based ABA behavior program;
 - e. failing to identify research based interventions in Student’s IEPs;
 - f. failing to provide research based behavior support and instruction;
 - g. predetermining Student’s placement and related services.

2. Did District deny Student a FAPE when it conducted the October 20, 2010 IEP without Student’s parents?

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).

3. Did District deny Student a FAPE by failing to timely fund Independent Educational Evaluations (IEEs) in the areas of speech and language, occupational therapy and physical therapy?
4. Did District deny Student a FAPE by failing to consider the IEE by Dr. Morris at the November 2010 IEP meeting?
5. Did District deny Student a FAPE by failing to timely provide Student's educational records?

Among the facts asserted in Student's complaint to support these issues are that Student has autism. His autism manifests in sensory integration deficits, attention and language difficulties, academic and behavioral problems and a propensity for social isolation and exploitation by others. Student also alleges that he has difficulties with specific memory functioning, weaknesses in cognitive flexibility, difficulties in independent task completion, the tendency to become easily overwhelmed and frustrated, poor coping skills, rigidity, limited confidence and negative behavioral patterns such as task avoidance, non-compliance, self-injurious and aggressive behaviors, elopement and inappropriately climbs on objects. It is also alleged that Student is not fully toilet trained. Student further alleges that as a result of his disabilities, he required specific supports and related services to access his education. Student alleges that among other things, he requires (1) placement in a highly structured classroom three days per week, 11 hours per week total; (2) intervention services through highly trained and highly qualified behavior aides using ABA behavior intervention strategies through the school day, (3) no less than 18 hours per week of intensive one to one ABA intervention services in the home setting, (4) the supervision of his home and school based ABA program by a highly trained and highly qualified ABA supervisor who can interpret the data collected by the one to one aide and modify student's behavior intervention plan. Student asserts that District did not provide those supports and did not provide and did not document in the IEP, research based instruction or interventions. Student also alleges that District's placement in a special day class and limitations on ABA services before Student's IEPs.

Student further alleged that District held the October 2010 IEP meeting without Student's parents and did not make sufficient efforts to obtain parental attendance and participation. Student also alleges that District eventually agreed to fund IEEs for PT, OT and speech and language, but unreasonably delayed agreement to funding of the IEEs. Student also asserts that although District paid for an IEE by Dr. Morris and had a copy of her report in hand before Student's IEP meeting, the team failed to consider and follow Dr. Morris' recommendations. Finally, Student alleges that District deprived parents of the ability to participate in the IEP process by withholding Student's educational records.

Student also adequately asserts proposed resolutions. Specifically, Student proposes as resolutions that District: (1) place Student in an appropriate, highly-structured classroom three days per week, (2) provide intensive one-to-one ABA behavior intervention services through a highly trained and highly qualified NPA provider throughout Student's school day,

(3) fund 18 hours per week of home based intensive one to one ABA behavior intervention services, (4) fund 10 hours per month of supervision for Student's one to one aide, (5) provide 50 weeks per year of NPA behavior, speech and language, occupational therapy and physical therapy, (6) fund a speech and language IEE, compensatory service and reimbursement for speech and language assessment and services, (7) fund an occupational therapy IEE, compensatory services and reimbursement for occupational therapy assessment and services, (8) fund a physical therapy IEE, compensatory service and reimbursement for physical therapy assessment and services, and (9) develop an appropriate IEP meeting with all necessary team members included and pay for attorney's fees incident to the development of an appropriate IEP.

ORDER

1. The complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: May 20, 2011

/s/

GLYNDA B. GOMEZ
Administrative Law Judge
Office of Administrative Hearings