

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. 2011050958

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On May 24, 2011 Parent on behalf of Student (Student) filed a Due Process Hearing Request¹ (complaint) naming Torrance Unified School District (District).

On June 8, 2011, 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 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

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).

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

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 to permit District to respond to the complaint and participate in a resolution session and mediation. Student’s complaint presents the following issues:

(1) Did District deny Student a free appropriate public education (FAPE) from May 2009 to the date of the complaint by failing to provide an appropriate placement in a small structured environment?

(2) Did District deny Student a FAPE from May 2009 to the date of the complaint by failing to identify Student’s unique needs in the areas of auditory processing, visual processing, math reasoning calculation, academic fluency and emotional regulation?

(3) Did District deny Student a FAPE from May 2009 to the date of the complaint by failing to provide an IEP with appropriate goals and objectives in the areas of auditory processing, visual processing, math reasoning calculation, academic fluency and emotional regulation?

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

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).

(4) Did District deny Student a FAPE from May 2009 to the date of the complaint by failing to provide sufficient and appropriate services to address Student's needs in the areas of auditory processing, visual processing, math reasoning calculation, academic fluency and emotional regulation?

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).) Student's complaint states eight proposed resolutions. By her proposed resolutions, Student seeks compensatory education in the form of tuition and transportation for a Non-Public school, reimbursement for testing and evaluation costs, reimbursement for counseling, visual therapy, tutoring provided by two different tutoring agencies, tuition for South Bay Academy and a determination of prevailing party status. The proposed resolutions stated in Student's complaint are well-defined and Student has met the statutorily required standard of stating a resolution to the extent known and available to her at the time.

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: June 9, 2011

/s/

GLYNDA B. GOMEZ
Administrative Law Judge
Office of Administrative Hearings