

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. 2011080073

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On July 28, 2011 Parent on behalf of Student (Student) filed a Due Process Hearing Request¹ (complaint) naming the Torrance Unified School District (District) as respondent. The complaint contains five issues.

On August 5, 2011, the District filed a response to the complaint and gave a detailed response to each issue alleged by Student in her complaint.

On August 12, 2011, the District filed a Notice of Insufficiency (NOI) as to Student's complaint on grounds that the complaint fails to meet notice requirements and was insufficiently pled as to issues one and two.

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

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).

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

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

Student’s complaint contains five issues. These issues are:

(1) The District has failed to assess Student in all areas of suspected disability since January 1, 2010 as it failed to assess her in the areas of occupational therapy (OT), physical therapy (PT), adapted physical education (APE), neuropsychology, social/emotional, health, sensory/processing and praxis.

(2) The District failed to offer an appropriate program to meet Student’s unique needs since January 1, 2010.

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.

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) The District failed to include Student's father (Father) to participate in the decision-making of the Individualized Education program (IEP) team meeting resulting from the District conducting an inappropriate evaluation.

(4) The District's IEP team predetermined its offer of a free appropriate public education at its IEP team meetings since January 1, 2010.

(5) The District failed to provide a full and complete copy of Student's education records.

The facts alleged in Student's complaint are sufficient to put the District on notice of the issues forming the basis of the complaint. The complaint contains a general statement of facts on pages two through five. Student's complaint identifies the issues and pleads adequate related facts about each issue. Additionally, Student's complaint contains a detailed list of proposed resolutions. The District is able, and did, respond to the complaint and be able to participate in a resolution session and mediation. Thus, the complaint, in general, is sufficient.

Student pleads Issue One on pages five through seven as it relates to the allegation that the District failed to assess Student in all areas of suspected disability. As evidence of the District being on notice of what it is being alleged by Student, the District was able to file a detailed response to Issue One in its August 5, 2011 response to the complaint. Thus, Student's Issue One is sufficient.

Student pleads Issue Two on pages seven through nine. Student clearly avers that the District's offers of FAPE were inappropriate because the District conducted "negligent assessments;" provided and offered inadequate PT and OT services; the IEP contained inadequate goals and objectives as a result of the failure to assess Student in all areas of suspected disability; and inappropriately eliminated Student's speech and language therapy services. Also, the District was able to file a detailed response to Issue Two. Thus, Student's Issue Two is sufficient.

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: August 15, 2011

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings