

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TORRANCE UNIFIED SCHOOL
DISTRICT AND LOS ANGELES UNIFIED
SCHOOL DISTRICT

OAH CASE NO. 2011100083

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On October 3, 2011, Student filed a Due Process Hearing Request¹ (complaint) naming Torrance Unified School District (TUSD) and Los Angeles Unified School District as respondents. On October 18, 2011, TUSD filed a Notice of Insufficiency (NOI) as to the complaint. On October 19, 201, Student filed a Response to the NOI. As discussed below, the complaint is sufficient.

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 respondents on notice of the issues forming the basis of the complaint. Student’s complaint alleges, in pertinent part, that when she attended schools in TUSD, TUSD had reason to suspect Student was a child with a disability yet failed to refer her for assessment, and failed to provide her with FAPE. Specifically, Student alleges: she had medical issues and failed academically during her tenure at TUSD; Parents informed TUSD that Student had medical issues, struggled in class and tended to be “hyper;” Student had clear signs of emotional disturbance including depression, self-mutilation and significant academic failure; and Student told her Health teacher and school counselor at TUSD of these issues.

TUSD’s NOI argues that on two lines of the complaint, Student makes allegations about certain information gleaned from Student’s private therapists without alleging that TUSD was on notice of that information. TUSD also argues that Student fails to allege TUSD was on notice that she was a child with a disability, and that there are no facts in support of one of Student’s proposed resolutions for a social skills group.

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).

TUSD's contentions are not persuasive. The complaint identifies the issues and adequate related facts about the problem to permit respondents to respond to the complaint and participate in a resolution session and mediation, and Student has met the statutorily required standard of stating a resolution to the extent known and available to her at the time. Thus, the complaint 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: October 24, 2011

/s/

JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings