

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. 2011101023

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On October 27, 2011, Student filed a Due Process Hearing Request<sup>1</sup> (complaint) against the Torrance Unified School District (District). On November 10, 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 four issues for hearing regarding the District’s alleged failure to timely assess Student’s visual impairments and not offering an individualized education program (IEP) that provided him with FAPE. As to Issue 1, the complaint adequately describes the District’s purported failure to timely assess Student’s visual impairments, despite having knowledge of area of suspected disability. Therefore, Issue 1 is sufficiently pled.

In Issue 2, Student alleges sufficient facts that from on or after October 27, 2009, that the District failed to provide Student with adequate assistive technology (AT) services to meet his unique needs, and also failed to maintain and update the AT devices it had provided Student.

In Issue 3, Student alleges insufficient facts that the District denied him a FAPE because it did not offer him services and placement that met his unique needs. Student’s issue is needlessly confusing because Student does not clearly identify the IEPs at issue, services and placement the District offered and why the District’s offer failed to provide him

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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).

a FAPE. Student is advised for purposes of clarity in an amended complaint to identify the IEP at issue, state the provisions of the IEP that Student challenges and provide a concise explanation why a particular service or placement did not provide Student with a FAPE. If Student is alleging any procedural violations, Student should allege the purported procedural violation in a separate section to clearly identify these alleged violations.

In Issue 4, Student's alleges sufficient facts that the District purportedly denied him a FAPE because the District at the October 26, 2010 IEP team meeting failed to report on Student's progress on his goal from his last IEP. Then the District merely repeated these prior goals in the October 26, 2010 IEP without taking into consideration any reason as to Student's lack of progress on his goals.

Student's proposed resolutions requests that the District fund a private school placement and independent educational evaluations (IEEs), provide specified educational services, reimburse Parents for IEEs and compensatory education. 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 resolutions stated in Student's complaint are well-defined, and therefore meet the statutorily required standard of stating a resolution to the extent known and available at the time.

Issues 1, 2 and 4 are 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 Issue 3, Student fails to allege sufficient facts supporting these claims to put the District on notice, and therefore these claims are insufficient.

#### ORDER

1. Issues 1, 2 and 4 of Student's complaint are sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).

2. Issue 3 of Student's complaint is 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>

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

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 Issues 1, 2 and 4 in Student's complaint.

Dated: November 10, 2011

/s/

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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings