

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
COUNTY OFFICE OF EDUCATION.

OAH CASE NO. 2012070791

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On July 25, 2012, Parent on behalf of Student filed a due process hearing request¹ (complaint) naming the Torrance Unified School District (District) and the Los Angeles County Office of Education (LACOE) as respondents.

On August 9, 2012, District timely filed a notice of insufficiency (NOI) as to Student's complaint. Opposition was received from Student on August 13, 2012.

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

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).

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

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 the problem to permit District to respond to the complaint and participate in a resolution session and mediation.

Student, who is hard of hearing, alleges that despite extensive assessments by his prior school district, and an individualized education program (IEP) that placed Student in a general education setting with significant support services and assistive technology, upon enrollment in District, Student was placed in a LACOE deaf and hard of hearing (DHH) oral program special day class (SDC) that did not meet his unique needs and without the services described in his prior IEP. The complaint alleges four claims that Student was denied a FAPE between December 2010 and June 2011 because District and LACOE (a) failed to develop goals tailored to Student’s unique needs (lack of academic goals), (b) failed to offer Student placement in the least restrictive environment (LRE), (c) failed to provide Student with appropriate related services (audiological, speech and language, specialized academic

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).

instruction), as well as ignored Student's articulation needs by delivering half of Student's speech services in a small group, rather than individual, setting, (d) failed to fully implement Student's prior IEP, including a menu of related services, assistive technology and accommodations, and (e) failed to offer Student sufficient academic support (including 90 minutes per day of specially designed direct instruction in reading strategies).

The alleged facts describe a disagreement with District concerning the appropriateness of the IEP developed by District, particularly as to services, technology and accommodations not adopted from the prior IEP, and District's failure to implement the prior IEP pending a new IEP. Student also clearly alleges a claim that he was not placed in the LRE. Therefore Student's statement of his five claims is sufficient.

Student's proposed resolutions request compensatory services, including academic instruction, speech and language services, an inclusion specialist, social skills training, and audiological services and training. 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 Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time. District's arguments regarding which compensatory services can be awarded, and to what extent, can be made at the hearing.

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 13, 2012

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings