

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. 2013100527

ORDER OF DETERMINATION OF
INSUFFICIENCY OF DUE PROCESS
COMPLAINT

On October 14, 2013, a court-appointed educational rights representative filed, on behalf of Student, a Due Process Hearing Request (complaint) ¹ naming Torrance Unified School District (District). On October 25, 2013, District timely 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 named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.⁴

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).

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

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 alleges a brief summary of facts, followed by a request that Student be excepted from the two-year statute of limitation and a listing of nine (9) legal issues, none of which are sufficient, as discussed below. The complaint’s introductory summary of facts states that Student is 18 years of age and has a court-appointed educational rights holder, who retained counsel to file the due process request. However, the introduction contains other statements which are seemingly contradicted by factual allegations later in the complaint. For example, Student asserts he is in a nonpublic school, but later claims he is placed in a general education classroom, with pullout resource services. Student asserts that he was initially eligible for special education in 2004 but later states his initial IEP was in 2008. The factual summary jumps back and forth from various IEP’s of 2003, 2005, and 2012, without ever identifying the actual services and placement. Inexplicably, Student states his address, which is outside the District, and does not allege facts indicating how District is the responsible LEA.

Student asserts that he is entitled to the statutory exception to the two-year limitations because District made misrepresentations regarding the Student’s services, which affected his having knowledge of whether the services were successful. The allegations interweave vague references to District’s child-find obligations, which somehow affected Student’s ability to timely file a due process request. The assertions in this regard are without dates, times, or other facts which provide any context for the vague claims regarding exceptions to the statute of limitations.

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).

Issue One claims that District denied Student a FAPE because of failure to meet its “child find” obligations. Yet, the complaint states – although with no clarity – that Student was receiving special education services for many years. Issue One contains no factual assertions which support a child-find claim and, therefore, is insufficient.

Issue Two claims that District, since February 2011, failed to assess Student in all areas of suspected disability, listing neuropsychological assessment, adequate functional behavior assessment (FBA), social behavior assessment, assistive technology (AT) assessment, or auditory assessment. Issue Two does not state why District should have performed the listed assessments. Other than citing the law, the factual assertions generally state that Student always had behavioral concerns and that District failed to conduct the listed assessments. Issue Two refers to a behavior support plan in a 2008 IEP, saying that District performed a behavior assessment in April 2010. However, Issue Two does not contain dates or other factual assertions which provide District with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.

Issues Six, Eight, and Nine also claim District did not assess Student in all areas of suspected disability. Issue Six again generally refers to behavior, but does not mention any assessment, and is thus insufficient. Issue Eight states that Student has not received occupational therapy services and should have at least been assessed for them, but does not allege when, how or why. Issue Eight is insufficient. Issue Nine refers to assessments which had already been referred to in Issues Two, Six, and Eight; it merely restates that District did not do the assessments. Issue Nine makes no additional factual allegations and is consequently similarly insufficient.

Issue Three asserts that District denied Student a FAPE from February 2011 by failing to offer Student school-based counseling, a mental health assessment, and a one-to-one aide. Issue Three quotes the law at length and then asserts that District did not provide the counseling, assessment, or aide. Issue Three does not allege dates, IEP’s, or other facts as to when or why Student was entitled to the services and, thus, is insufficient.

Issue Four states that District denied Student a FAPE since February 2011 because it failed to design and implement a behavior intervention plan. Though Issue Four generally states that Student has had recognized behavior issues, the issue does not contain any factual allegations regarding Student’s behavior. Issue Four also makes factual allegations which are contrary to the summary of facts. For example, Issue Four states the Student “never received a behavior support plan” but the summary of facts claims that District failed to implement a BSP and Student failed to meet his BSP goals, while Issue Two states Student had a BSP in 2008. Issue Four is vague and confusing, failing to provide sufficient information for the District to know how to prepare for the hearing and how to participate in resolution sessions and mediation and is therefore insufficient.

Issue Five asserts that District denied Student a FAPE from February 2011 by failing to draft appropriate and measurable IEP goals and objectives. The issue generally asserts

that the IEP's goals have not been tailored to meet Student's unique needs, but does not identify or refer to any specific goals, objectives, or IEP's. Issue Five is insufficient.

Issue Seven asserts that District failed to provide Student a FAPE by placing him in a general education classroom and, thereby, disregarded Student's special needs. Issue Seven fails to refer to an IEP or a placement, other than to say that Student has trouble focusing in the classroom and received hours from a resource teacher. Issue Seven states that Parent requested a special education classroom, but does not say when the request was made or to whom the request was stated. Issue Seven alleges insufficient facts to put District on notice of how to prepare for the hearing and how to participate in resolution sessions and mediation.

Student's complaint is insufficiently pled in that it fails to provide District with the required notice of a description of the problem and the facts relating to the problem.

ORDER

1. Student's complaint is insufficiently pled under section Title 20 United States Code 1415(c)(2)(D).

2. Student shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).⁸

3. 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.

4. If Student fails to file a timely amended complaint, the complaint will be dismissed.

5. All dates previously set in this matter are vacated.

Dated: October 29, 2013

/s/

CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings

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