

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. 2014050346

ORDER FINDING STUDENT'S
COMPLAINT INSUFFICIENT AS TO
ISSUES ONE, TWO, THREE, AND
FOUR, AND PARTIALLY
INSUFFICIENT AS TO ISSUE FIVE

On May 5, 2014, Student filed a Due Process Hearing Request¹ (complaint) naming the Torrance Unified School District (Torrance).

On May 20, 2015, Torrance 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

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

Student raises five issues in his complaint. In his first three issues, Student contends that he required placement in a 24-hour a day residential treatment center in order to make meaningful progress in terms of his psychological, academic, and behavior deficits during the 2012 extended school year, the 2012-2013 school year, and the 2013-2014 school year. However, Student provides absolutely no factual basis for these three issues. He does not state what his placement was during the times in question, what his specific deficits are, why the placement provided by Torrance did not meet those needs, or why he requires placement in a residential treatment center in order to receive a free appropriate public education. The mere statement of what Student believes he requires, without more, fails to meet the legal standard for sufficiency. For these reasons, issues one, two, and three are insufficient as pled.

In issue four, Student contends that Torrance failed to hold a timely individualized educational program team meeting to make an appropriate offer of placement after Student was “kicked out” of his nonpublic school placement. Student further alleges in issue four that his mother was forced to identify and fund a program at a facility called Center for

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).

Discovery. However, Student fails to provide any supporting facts for these contentions. He fails to identify the non-public school that he attended. He fails to state whether Torrance was funding the placement. He fails to state when he was told he had to leave the non-public school, if, when, and how his parent and Torrance were notified about his rejection from the non-public school, and when he contends Torrance should have held an IEP meeting to make another offer of placement. With regard to the allegation that his mother had to seek out and fund a placement for him, Student fails to state when he began attending Center for Discovery, what type of placement it is, and how long he has been there. For these reasons, Student's issue four is legally insufficient.

In issue five, Student contends that Torrance committed procedural violations at all his IEP meetings during the 2012 extended school year, the 2012-2013 school year, and 2013-2014 school year by:

- a) Disregarding parental input;
- b) Predetermining program offers;
- c) Disregarding independent evaluations;
- d) Underestimating the true extent of Student's challenges; and
- e) Misrepresenting the situation to Student's parent and other members of his IEP team.

Sub-issues (a) through (d) of issue five are sufficiently pled to put Torrance on notice of the problems. Student identifies the IEP's at issue, and specifies the alleged procedural violations that occurred, which provides enough information for Torrance to be able to participate in resolution and mediation sessions regarding the issues, and to defend against them at hearing.

However, sub-issue (e) is not pled sufficiently. It fails to state what the situation was that Torrance allegedly misrepresented to Student's parents and other members of his IEP team. The issue fails to state who made the alleged misrepresentations, what they were, and how the misrepresentations either prevented Student from receiving educational benefit, or interfered with his parent's ability to participate in the IEP process. For this reason sub-issue (e) of issue five is not legally sufficient.

ORDER

1. Sub-Issues (a) through (d) of issue five of Student's complaint are sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

2. Issues one, two, three, four, and sub-issue (e) of Student's complaint are 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).⁸

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 sub-issues (a) through (d) of issue five in Student's complaint.

6. All dates shall remain as presently calendared unless Student files an amended complaint.

DATE: May 22, 2014

/s/

DARRELL LEPKOWSKY

Administrative Law Judge

Office of Administrative Hearings

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