

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. 2014120688

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On December 11, 2014 Student filed a due process hearing request¹ (complaint) naming Torrance Unified School District. On March 12, 2015, Student was granted leave to amend and his amended complaint was filed.

On March 16, 2015, District timely filed a notice of insufficiency (NOI) as to Student's amended 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’s District filed an NOI as to Student’s original complaint. By order dated December 24, 2014, OAH found that complaint sufficient. Student’s amended complaint adds allegations concerning circumstances surrounding a February 27, 2015, individualized education program, and District’s NOI challenges only the sufficiency of the new allegations.

Student alleges that at the February 2015 IEP team meeting, the IEP team (i) disregarded the recommendations of the private school Student was then attending regarding Student’s educational progress and educational needs, (ii) failed to prepare a transition plan, (iii) belatedly sought to assess Student in the areas of occupational therapy, language and speech, after the IEP team meeting, rather than before the meeting, (iv) made only a verbal offer of a program at the meeting, and (v) failed to provide Parents with a written copy of the IEP. As a result of these procedural violations, the amended complaint alleges that Student was denied a FAPE because District infringed on Parents’ right to meaningfully participate in developing Student’s educational program, and Student suffered a loss of educational benefit, when District failed to identify autism as an area of disability, failed to accurately report Student’s present levels of progress or develop appropriate goals, and

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).

predetermined Student's placement in disregard of Parents' concerns and the information available. Student's amended complaint also alleges that District failed to offer Student a FAPE because the February 2015 IEP offered him insufficient services in the areas of language and speech, occupational therapy, counseling, social skills and assistive technology, and a placement without the structure and supports Student needed.

The facts alleged in Student's amended complaint are sufficient to put the District on notice of the issues forming the basis of the complaint. Student's amended 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.

Therefore, Student's statement of claims in the amended 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.

DATE: March 24, 2015

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings