

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS on behalf of STUDENT,

v.

BONITA UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2009020218

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On February 5, 2009, attorney Mark Woodsmall filed a Due Process Hearing Request¹ (complaint) for parents, on behalf of Student, against the Bonita Unified School District (District) and the Los Angeles County Department of Mental Health (LACDMH).

On February 19, 2009, attorney Nancy Finch-Heuerman, on behalf of District, filed a Notice of Insufficiency (NOI) as to Student's complaint.

APPLICABLE LAW

A party against whom a due process hearing request has been filed has the right to challenge the sufficiency of the complaint. (20 U.S.C. § 1415(b) & (c); Ed. Code, § 56502, subd. (d)..) The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of United States Code, title 20, section 1415(b)(7)(A) and Education Code section 56502, subdivision (c)(1).

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. (20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV); Ed. Code, § 56502, subd. (c)(1).) The purpose of these requirements is to promote fairness by providing against whom complaints are filed with a specific understanding of the allegations and to provide a school district with sufficient information to make a specific response to the complaint as required by United States Code, title 20, section 1415(c)(2)(B), and to participate in a resolution session and mediation under section 1415, subsections (e) and (f). (See H.R.Rep. No. 108-77, 1st Sess.

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).

(2003); Sen. Rep. No. 108-185, 1st Sess. (2003).) In addition, fundamental principles of due process apply to administrative proceedings in special education matters. A party against whom a complaint is filed is entitled to know the nature of the specific allegations being made against it, such that respondent may be able to prepare a defense. (*Tadano v. Manney* (9th Cir. 1947) 160 F.2d 665, 667; *Hornsby v. Allen* (5th Cir. 1964) 326 F.2d 605, 608.)

DISCUSSION

Student's complaint alleges a number of claims, as follows: Issue A; Issue B; Issue C; Issues D.1, D.2, D.3, and D.4; and Issue E,² which includes four sub-issues. As discussed below, Student's Issues Issue A; Issue B (as to the 2006-2007 school year and the 2007-2008 school year); Issues D.1., D.2., and D.3.; and Issue E are sufficiently pled to put District on notice as to the basis of Student's claims. However, these issues are not sufficiently pled to put LACDMH on notice as to the basis of Student's claims against LACDMH. The remainder of Student's issues are insufficiently pled as to both District and LACDMH.

Student alleges as Issue A that District failed to offer Student a free appropriate public education (FAPE) for the 2007-2008 school year because the IEP was not based on an accurate reporting of Student's present levels of performance. Student specifies she is referring to the February 4, 2008, IEP, and District's failure to include present levels of performance in the areas of social/emotional and behavioral. Student specifies in detail the social/emotional difficulties and behaviors that she was exhibiting. Thus, Issue A is sufficiently pled against District. This issue is not pled against LACDMH and does not allege facts concerning LACDMH. Therefore, the issue is insufficiently pled as to LACDMH.

Student alleges as Issue B that District failed to assess her in all areas of suspected disability during the 2006-2007, 2007-2008, or 2008-2009 school years. With regard to the 2006-2007 school year, and specifically regarding the February 2007 IEP, Student alleges District failed to assess her at all, and that she should have been assessed in the areas of occupational therapy needs, cognitive ability, and math performance. Student Issue B is sufficient against District as to the 2006-2007 school year. With regard to the 2007-2008 school year, and specifically regarding the February 2008 IEP, Student alleges District failed to assess her in the areas of social/emotional/behavioral functioning, cognitive functioning, and mathematics, and alleges reasons why District should have assessed her in those areas. Thus, Issue B is sufficient against District as to the 2007-2008 school year.

However, Student alleges no facts regarding the 2008-2009 school year in connection with Issue B. Therefore, Issue B is insufficient as to the 2008-2009 school year. In addition, this issue is not pled against LACDMH and does not allege facts concerning LACDMH in connection with Issue B. Therefore, the entire issue is insufficiently pled as to LACDMH.

² Student's complaint titles two of her issues, on page 8 and on page 13, as Issue D. Issue D on page 13 of Student's complaint will be referred to as "Issue E."

Student alleges as Issue C that “the IEP goals were not designed to meet [Student’s] unique needs.” The goals to which Student refers appear to be in the areas of social and emotional functioning, and in math. However, Student does not allege the school years or time periods involved in connection with the social and emotional functioning goals. Student refers to the IEP team’s assessment “discussed above,” but does not specify which one of the assessments “discussed above.” Thus, it is impossible to determine which school years are involved in the portion of this issue that relates to social and emotional functioning goals. Moreover, while Student refers to the math goals provided in the February 2007 and February 2008 IEPs, she fails to state why these goals were insufficiently designed to meet her unique needs, and what the goals should have been. In addition, Student alleges no facts concerning LACDMH. Therefore, this issue is insufficient.

Student generally alleges as Issue D that District failed to offer an appropriate educational placement and services to meet her unique needs and confer an educational benefit. As Issue D.1, Student alleges that she has not progressed in her “current program” and is not benefiting from her education, and provides as factual support a summary of test scores that allegedly show that Student is not making progress. Student’s “current program” refers to the 2008-2009 school year and refers only to District. Therefore, Issue D.1. is sufficient to that school year and to District only. As Issue D.2., Student alleges that the “current placement” is not designed to meet her unique educational needs and does not confer and educational benefit. Student’s “current placement” refers to the 2008-2009 school year provided by District. Therefore, Issue D.2. is sufficient as to District as to the 2008-2008 school year. As Issue D.3., Student alleges that “services were not designed to meet [Student’s] unique needs.” Student specifies services required pursuant to the February 2007 and February 2008 IEPs. Thus, Issue D.3. is sufficiently pled against District and as to the two IEPs specified. As Issue D.4., Student alleges that the programs offered Student in the 2006-2007 and 2007-2008 school years “were not grounded in scientifically based instructional practices.” Student fails to state which of the programs were not grounded in scientifically based instructional practices. Therefore, Issue D.4. is insufficiently pled. Moreover, Student alleges no facts concerning LACDMH with regard to issue D.1., D.2., or D.3. Thus, Issue D and all of its sub-issues are insufficiently stated as to LACDMH.

Student alleges as Issue E (see fn. 3) that “errors in the IEP process deprived Student of educational benefit, impeded parental involvement, and denied FAPE. This issue is sufficiently stated against District regarding “non-attendance by required personnel,” including the school nurse, at the February 2008 IEP team meeting, non-attendance by the school nurse and occupational therapist at the February 2007 IEP team meeting, failure to provide prior written notice that occupational therapy services were being discontinued prior to the February 2007 IEP team meeting, and denial of parents’ right to participate during the February 2008 IEP meeting. However, Student alleges no facts concerning LACDMH as to Issue E or any of its sub-issues. Therefore, the issue is insufficient as to LACDMH.

To the extent that Student alleges various problems throughout the complaint, but does not list the problems as “issues” and provide supporting facts, the problems will not be

considered issues at the due process hearing. As discussed above, a party against whom a complaint is filed is entitled to know the basis of each claim and the nature of the specific allegations being made against it, with respect to each issue or problem, so that the party may be able to prepare a response, prepare for a resolution meeting, or prepare a defense for hearing. Student's complaint fails to provide this notice as to any issue other than those deemed sufficient above.

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); Ed. Code, § 56502, subd. (c)(1)(D).) Student has met the statutorily required standard of stating a resolution to the extent known and available to her at the time.

ORDER

1. Issue A; Issue B (as to the 2006-2007 school year and the 2007-2008 school year); Issues D.1., D.2., and D.3.; and Issue E of Student's complaint are sufficient as to District only. These issues are not sufficient as to LACDMH.

2. Issue B (as to the 2008-2009 school year), Issue C, and Issue D.4. are insufficiently pled against District. All of Student's issues are insufficiently pled against LACDMH.

3. Student shall be permitted to file an amended complaint.³

4. The amended complaint shall comply with the requirements of United States Code, title 20, 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 against District on Student's Issue A; Issue B (as to the 2006-2007 school year and the 2007-2008 school year); Issues D.1., D.2., and D.3.; and Issue E.

Dated: February 24, 2009

/s/

DEBRA HUSTON
Administrative Law Judge
Office of Administrative Hearings

³ The filing of an amended complaint will restart the applicable timelines for a due process hearing.