

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL  
DISTRICT, NEW WEST CHARTER  
MIDDLE SCHOOL AND SOUTHWEST  
SELPA.

OAH CASE NO. 2009040119

DETERMINATION OF SUFFICIENCY  
OF DUE PROCESS COMPLAINT

On April 01, 2009, Parents, on behalf of Student, filed a Due Process Complaint<sup>1</sup> (complaint) naming Los Angeles Unified School District, New West Charter Middle School, and Southwest SELPA as the respondents.

On April 13, 2009, respondents New West Charter Middle School (New West) and Southwest SELPA (SWSELPA) filed a Notice of Insufficiency (NOI) and Response to Petitioner's Due Process Complaint. On April 16, 2009, Student filed a Response to the Notice of Insufficiency.

APPLICABLE LAW

The respondent to a due process hearing request has the right to challenge the sufficiency of the complaint. (20 U.S.C. § 1415(b) & (c).)<sup>2</sup> The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of section 1415(b)(7)(A).

A parent or agency shall request an impartial due process hearing within 2 years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint. (§ 1415(f)(3)(C); Ed. Code, § 56505(1).)

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<sup>1</sup> 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).

<sup>2</sup> All statutory citations are to Title 20 United States Code unless otherwise noted.

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. (§ 1415(b)(7)(A)(ii)(III) & (IV).)

The purpose of these requirements is to promote fairness by providing respondents 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 section 1415(c)(2)(B), and to participate in a resolution session, mediation, and hearing under section 1415, subsections (e) and (f).

In addition, fundamental principles of due process apply to administrative proceedings in special education matters. The respondent 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.)

Though sufficiency review is triggered by a respondent's notice (§§ 1415(b)(2)(A) & (C)), and a petitioner may respond, the hearing officer shall make a sufficiency determination on the face of the request for due process hearing (Ed. Code, § 56502, subd. (d)(1)). Factual assertions and explanations made in a response to NOI are not part of the complaint and cannot render an otherwise insufficient complaint sufficient.

## DISCUSSION

Student's complaint is divided into four sections: Introduction, Statement of Facts, Issues Presented, and Proposed Resolutions. The Statement of Facts begins in October 1998 and continues through a March 2009 amended IEP.

### Student's complaint is insufficient as to respondents New West and SWSELPA.

The complaint states that Student enrolled at respondent New West for the 2003-2004 school year (¶ 16) and, following a June 2006 IEP, enrolled in Vista Mar, a private school, for the 2006-2007 school year (¶¶ 30-31). Therefore, the alleged culpability of respondents New West and SWSELPA<sup>3</sup> is based upon facts which occurred more than two years before the April 1, 2009 filing date.

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<sup>3</sup> Petitioner named Southwest SELPA as a respondent solely because Student contends that it shares fiscal responsibility for special education service provided by New West.

Respondents New West and SWSELPA contend that the complaint is insufficient because it does not indicate how the Student can assert issues based upon alleged violations and omissions which predate the statutory two-year limitation. The Student responds by referring to statutory authority which specifies exceptions to the timeline (§ 1415(f)(2)(D); Ed. Code, § 56505(1)).

Respondents argue they are entitled to know the nature of specific allegations which entitle Student to an exception to the timeline, such that respondent may be able to prepare a response. Student makes contentions in the Response to the NOI in support of an argument for tolling, but the contentions are not made in the complaint.

As discussed above, a respondent 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 respondent may be able to prepare a response, prepare for a resolution meeting, or prepare a defense for hearing. If the only allegations against a respondent exceed the two-year timeline, the complaint should provide some indication of why the Student is entitled to an exception, enabling the respondent to prepare.

A finding of sufficiency might be appropriate if the respondents New West and SWSELPA would otherwise remain parties to the due process. However, the only alleged bases for the issues against these two respondents exceed the two-year time limit. If the two-year limit applies with no exception, these respondents cannot be legally culpable.

The IDEA requirement, in essence, is to file a short and plain statement of the cause of action and the grounds upon which it rests. In other words, the claim must answer the questions who (i.e. district), what (what one is claiming), how (what are the important facts regarding the claim/grounds), and when (timeframe). The complaint fails to provide this notice relevant to an exception to the statutory two-year timeline.

For the reasons described above, the Student's complaint is insufficient because it does not comply with the requirements of Section 1415(b)(7) as to respondents New West and SWSELPA..

Except for the reasons specified hereinabove, the complaint is sufficient.

Respondents contend that Issue No. 1, Sub-issue 1, is insufficient because the complaint inaccurately references a code section. However, the code section reference is unnecessary. This section's factual allegations are sufficient, enabling respondents to prepare a response.

Respondents argue that Issue #2 is insufficient because the Student uses the all inclusive "respondents" in the heading while the body refers to conduct which occurred after Student left New West. Since respondents state the factual assertions concern LAUSD and not them, respondents are able to prepare a response. .

As to Issue #3, respondents similarly argue that the heading refers to actions by the “District” (LAUSD), but the body uses the inclusive “respondents” in charging that appropriate programs were not offered during previous school years, each of which were after Student left New West. Again, since respondents are able to determine that the factual assertions concern LAUSD and not them, respondents are able to prepare a response.

The facts alleged in Issue No. 1, Sub-issue 1, Issue No. 2 and Issue No. 3 of Student’s complaint are sufficient to put the respondents New West and SWSELPA on notice of the issues forming the basis of the issues. Student’s complaint identifies the issues and sufficient facts and dates to document the problem to permit respondents to adequately respond to these issues and to participate in a resolution session, mediation, and hearing.

Therefore, Student’s Issue No. 1, Sub-issue 1, Issue No. 2 and Issue No. 3, are sufficient.

Proposed Resolutions meet the statutorily required standard.

New West and SWSELPA assert that Student’s proposed resolutions are insufficient. Respondents claim the resolutions are vague because Student does not specify the party to which each resolution applies and does not state what portion of each resolution a party is responsible. This is not a statutory standard.

A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (§ 1415(b)(7)(A)(ii)(IV).) The proposed resolutions stated in Student’s complaint are not well-defined. However, Student has met the statutorily required standard of stating resolutions to the extent known and available to Student at the time.

ORDER

1. Pursuant to section 1415(c)(2)(D), Student’s complaint is insufficient as to the two-year timeline, as stated hereinabove.

2. Issue No. 1, Sub-issue 1, Issue No. 2 and Issue No. 3, of the complaint are deemed sufficient pursuant to section 1415(c)(2)(C) and Education Code section 56502, subdivision (d)(1).

3. Pursuant to section 1415(b)(7)(A)(ii)(IV), the proposed resolutions meet the statutory standard.

2. Pursuant to section 1415(c)(2)(E)(i)(II), Student may file an amended complaint to correct the deficiencies related to the two-year timeline, as stated hereinabove.

3. The amended complaint shall comply with the requirements of 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 hearing shall proceed on Student's complaint as to LAUSD, only.

5. The presently assigned dates for mediation, prehearing conference, and due process hearing are to remain as calendared.

6. Should Student timely file an amended complaint, all dates set in this matter will be vacated pursuant to section 1415(c)(2)(E)(ii)(II), which provides that the filing of an amended complaint will restart the applicable timelines for a due process hearing

Dated: April 20, 2009

/s/

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CLIFFORD H WOOSLEY  
Administrative Law Judge  
Office of Administrative Hearings