

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BONITA UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2010070131

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On June 29, 2010 Student filed a Due Process Hearing Request¹ (complaint) naming the Bonita Unified School District (District).

On July 14, 2010, the District timely filed a Notice of Insufficiency (NOI) as to all allegations in 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 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 ALJ.⁷

DISCUSSION

Student’s complaint contains four issues. In the first, he alleges that for the 2009-2010 school year, the District caused him a loss of educational opportunity by failing to provide an assessment plan within 15 days of written referral notice by his parent. Student alleges that his parent requested an assessment on May 7, 2010, but a plan was not provided to her until June 19, 2010, 28 days late. The District contends that this allegation is insufficient because Student does not specifically state in which area his parent requested an assessment and because the allegation does not specify what type of educational opportunity Student lost and the extent of the loss. However, Student specifically states that parent made a written request for assessment on May 7, 2010. The District is therefore aware of what testing the request encompassed. It is Student’s burden at hearing to prove the extent to which he may have lost educational benefit because of the alleged 28 day delay in providing his parent with an assessment plan. It is not required that he do so in his complaint. Student’s issue one is therefore sufficiently pled.

In issue two, Student contends that the District denied him a free appropriate public education (FAPE) for the 2009-2010 school year by failing to seek out, locate, and identify Student as a child who may be in need of special education services and placement. Student also alleges that as early as September 2009, the District had knowledge from other sources that Student may have had a suspected disability in one or more areas. Student further alleges that the District did not respond to emails from his parent or to information from his doctors. However, Student’s issue two contradicts the background facts stated in the complaint. Student contends that the District failed to identify him as possibly needing special education and services, yet his background facts state that he was found eligible for special education in February 2006. Student states that the District failed to acknowledge that he had a suspected disability, but Student states in his complaint that he has already been found eligible under the classification of other health impaired. Student fails to identify any

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).

other areas of suspected disability which he believes need to be addressed by the District. Student fails to identify in which other areas he may have suspected disabilities and fails to discuss how or why the District should have been aware of this information. For these reasons, Student's issue two is insufficiently pled.

In issue three, Student alleges that the District denied him a FAPE in the 2009 – 2010 school year by failing to develop an individualized education program (IEP) for him or start the assessment process when asked in writing to do so by his parent. However, this allegation contradicts the information provided by Student that the District developed IEPS for him - albeit allegedly deficient ones - on November 2, 2009, March 24, 2010, and May 21, 2010. Student's issue three also fails to state when his parent requested that an assessment be done and in what areas she requested assessment. Student's issue three is therefore insufficiently pled.

Student states in issue four that the District failed to conduct a comprehensive evaluation of him in the 2008 – 2009 school year, resulting in an IEP that did not meet his needs. This issue also contends that Student's IEPS dated November 2009, March 24, 2010, and May 11, 2010, did not offer Student a FAPE. However, other than stating that the District's evaluation conducted in school year 2008 – 2009 did not include a classroom observation, Student fails to identify which of the evaluations conducted by the District are deficient and the reasons why they are deficient. With regard to the identified IEPS, Student fails to state in what specific areas the IEPS are deficient. Student does not state whether it is the IEP present levels of performance, the IEP goals, or the placement and services identified that are deficient. Nor does Student state why the IEPS are deficient. Issue four is therefore insufficiently pled.

Student's issues two, three, and four are insufficiently pled as these issues fail to provide the District with the required notice of a description of the problems and the facts relating to the problems, to an extent that the District could address the issues in a resolution session or mediation, or defend against them at hearing.

ORDER

1. Issue one of Student's complaint is sufficient under section 1415(b)(7)(A)(ii).
2. Issues 2, 3, and 4 Student's complaint are insufficiently pled under section 1415(c)(2)(D).
3. Student shall be permitted to file an amended complaint under section 1415(c)(2)(E)(i)(II).⁸
4. 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.

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

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issue one of his complaint.

Dated: July 19, 2010

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings