

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT on Behalf of STUDENT,

v.

BERRYESSA UNION SCHOOL  
DISTRICT.

OAH CASE NO. 2009020255

DETERMINATION OF SUFFICIENCY  
OF DUE PROCESS COMPLAINT

On February 08, 2009, Parent filed a Due Process Hearing Request<sup>1</sup> (Complaint) on behalf of Student naming the Berryessa Union School District (District).

On February 20, 2009, attorney Karen E. Samman of Lozano Smith filed a Notice of Insufficiency (NOI) on behalf of District.

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). The notice of insufficiency shall be filed within fifteen days of receiving the due process hearing request. The hearing officer shall make a sufficiency determination on the face of the request for due process hearing. (Ed. Code, § 56502, subd. (d)(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. (§ 1415(b)(7)(A)(ii)(III) & (IV); Ed. Code, § 56502, subd. (c).)

The purpose of these requirements is to promote fairness by providing respondents with a specific understanding of the allegations against them, to prevent respondents from having to prepare for any and every issue that could possibly be raised, to provide

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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.

respondents with sufficient information to respond to the complaint as required by section 1415(c)(2)(B) and to enable the parties to meaningfully participate in a resolution session and mediation under section 1415, subsections (e) and (f). In addition, fundamental principles of due process apply to administrative proceedings in special education matters. A party against whom a complaint has been filed is entitled to know the nature of the specific allegations being made against it, such that the party 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

The IDEA does not require that the person or entity filing a claim plead facts with particularity but rather the requirement is, in essence, to file a short and plain statement of the cause of action and the grounds upon which it rests, and to the relief entitled. In other words, the claim must answer the questions who (i.e. the district), what (what are you claiming), how (what are the salient facts regarding your claim/the grounds) and when (timeframe).

Student's Complaint alleges that District failed to offer Student FAPE for the 2006-2007, 2007-2008, and 2008-2009 school years, because it failed to offer Student appropriate placement, and adequate ABA, speech and language, and OT services. Parent contends that during those school years Student required a classroom with a low teacher-student ratio and a one-to-one aide trained in ABA therapy. Parent alleges that District failed to offer a behavior plan to address Student's unique needs in behavior that resulted in his eloping and failing to attend to task. Parent further alleges during those school years District's offer of speech and language services failed to address Student's expressive, receptive and pragmatic speech deficits, and District's offer of OT services failed to address Student's fine-motor, gross-motor and sensory integration deficits.

District contends that the Complaint is insufficient because it fails to set out sufficient facts or information that supports Student's claims. Specifically, the District argues: Issue One fails to allege why District's offer at the June 15, 2006 IEP, for the 2006-2007 school year, of placement, applied behavior analysis therapy services (ABA), speech and language services, and occupational therapy (OT) services was inappropriate; Issue Two fails to allege why District's offer at the June 15, 2007 IEP, for the 2007-2008 school year, of first grade and failure to retain Student, ABA, speech and language, and OT services was inappropriate; Issue Three fails to allege why District's offer at the October 4, 2007 interim IEP to conduct a behavioral assessment was a denial of FAPE; and, Issue Four fails to allege why District's offer at the April 25, 2008 IEP, for the 2008-2009 school year, of extended school year placement and behavior, speech and language, and OT services was inappropriate.

A Complaint need not allege the particularities asserted by District and Student's Complaint alleges sufficient facts that put District on notice of the issues. Student's Complaint is sufficiently pled in that it provides District with the required notice of a description of the problem, and the facts relating to the problem.

A Complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. Student proposes that District: fund Student's placement in a non-public school; provide a full time one-to-one aide trained in ABA therapy; provide 70-minutes each of speech and language and OT services; provide consultation by a speech and language pathologist; reimburse Parents for private assessments and transportation costs; and provide compensatory education from January 2007 through present. Student's proposed resolutions are sufficiently stated.

### ORDER

1. The Complaint is sufficient under section 1415(b)(7)(A)(ii).
2. All mediation, pre-hearing conference, and hearing dates in this matter shall remain on calendar.

Dated: March 3, 2009.

/s/

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CLARA SLIFKIN  
Administrative Law Judge  
Office of Administrative Hearings