

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT, LOS ANGELES COUNTY
OFFICE OF EDUCATION AND
HAWTHORNE SCHOOL DISTRICT.

OAH CASE NO. 2014050226

ORDER DETERMINING COMPLAINT
INSUFFICIENT AS TO HAWTHORNE
SCHOOL DISTRICT

On May 5, 2014, Student filed a Due Process Hearing Request]¹ (complaint) naming three school districts: the Los Angeles Unified School District (LAUSD), the Los Angeles County Office of Education (LACOE), and the Hawthorne School District (Hawthorne) .

On May 19, 2014, Hawthorne timely filed a Notice of Insufficiency (NOI) as to 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 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

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).

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

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 allegations are not broken down by each school district. Rather, she alleges multiple issues against multiple parties. Student alleges that the school districts failed to perform a functional analysis assessment or functional behavior assessment thereby denying Student a free appropriate public education. Student also alleges that Hawthorne failed to conduct her triennial assessment when it was due and then failed to hold her triennial individualized education program team meeting at the time it was due. Student also makes allegations of a failure to provide her with an appropriate placement; it is totally unclear whether that allegation applies to only LAUSD or whether it applies to Hawthorne as well. Finally, Student contends that she was denied a free appropriate public education because service providers who could interpret the instructional implications of Student’s assessments did not attend her September 2012 and November 2013 IEP meetings.

However, there is no specific factual discussion as to Hawthorne in Student’s entire complaint. Student states that she moved into the boundaries of the Lawndale School

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).

District in 2008. Lawndale is not named as a respondent to this action. Student states that Lawndale referred her to a LACOE program operated at Mark Twain Elementary School, where Student remained until transferring into LAUSD on September 27, 2012, and began attending her school of residence there.

Student does not state how and why Hawthorne was, or should have been, involved in her education. Student does not state if and when she moved from the Lawndale School District into the Hawthorne School District. She does not state whether Hawthorne was involved in developing IEP's for her, or if Hawthorne had a responsibility for doing so. Student does not state why, if she resided in Hawthorne's boundaries, she continued to attend school at Mark Twain, where she had been placed by a referral from Lawndale. There is simply no nexus to connect Hawthorne to any of the allegations raised in Student's complaint. Significantly, Student's complaint fails to identify which school district was responsible for each of the allegations raised. For example, Student alleges that not all proper IEP team members attended her September 2012 and November 2013 IEP team meetings. There is no specific school district named for this allegation. However, according to Student's complaint, she moved within the boundaries of LAUSD in September 2012; therefore there is no stated reason as to why any district other than LAUSD would be responsible for who attended the November 2013 meeting.

Additionally, although Student states that there was no one at these two IEP meetings who could interpret the results of her assessments, Student fails to state what assessments were being reviewed at the meetings. There is no discussion of whether this allegation applies to every assessment being discussed or only to distinct assessments.

Student then alleges that "the District" failed to assess her in all areas of suspected disability during her triennial assessment. Again, it is unclear as to whether this allegation applies to Hawthorne.

In sum, Student's allegations as to Hawthorne are all insufficiently pled. Student's complaint fails to provide Hawthorne with the required notice of a description of the problem and the facts relating to the problem, as they pertain specifically to Hawthorne.

Additionally, a due process 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).) Student's resolutions as to Hawthorne have no relationship to the facts alleged in the complaint. Student requests an order that "the District" provide her with an appropriate placement and services. However, there are no facts which indicate that Hawthorne has any present or future responsibility to provide Student with a placement and/or services. Therefore, Student's first resolution is insufficient as alleged with regard to Hawthorne.

ORDER

1. Student's complaint is insufficiently pled under section Title 20 United States Code 1415(c)(2)(D), as to Hawthorne.
2. Student shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).⁸
3. The amended complaint shall comply with the requirements of Title 20 United States Code 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 complaint will be dismissed as to Hawthorne, and the hearing shall proceed only as to LAUSD and LACOE.
5. All dates previously set in this matter shall remain on calendar as to LAUSD and LACOE, unless Student files an amended complaint.

DATE: May 19, 2014

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings

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