

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS on behalf of STUDENT,

v.

BERRYESSA UNION SCHOOL
DISTRICT.

OAH CASE NO. 2009020593

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On February 13, 2009, parents filed a Due Process Complaint, requesting a hearing, on behalf of student, naming Berryessa Union School District as the respondent.

On February 26, 2009, respondent Berryessa Union School District timely filed a Notice of Insufficiency (NOI) as to petitioners' complaint.

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).)¹ The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of section 1415(b)(7)(A). 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).)

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 and mediation under section 1415, subsections (e) and (f).

¹ All statutory citations are to Title 20 United States Code unless otherwise noted.

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.)

DISCUSSION

Student's complaint is 14 single-spaced pages and is divided into three major sections: History, Supporting Documents, and the charging Violations.

After providing introductory and identification information, Student sets forth a section entitled: "History of the Relationship between Student and BUSD." The History begins with the 2005-2006 school year and proceeds through each school year until the present. For each school year, petitioners list and review every Individualized Education Plan (IEP), along with the reports and/or assessments which were or were not considered by the IEP team, the IEP findings and conclusions, and the IEP offers of placement and services. For each IEP, the History includes the petitioning parents' response and objections.

Though the History begins in 2005, the complaint does not make any claims or seek any damages outside the applicable time of limitation.

The second section is entitled "Supporting Documents" and lists every report and IEP upon which the petitioners rely in support of their narrative assertions in the History. The documents are structured the same as the history, indicating the year or IEP for which a document is being cited.

Finally, the third general section is entitled "Violations" and contains seven (A through G) charging allegations with proposed resolutions for each. Violation A refers to the June 13, 2007, IEP; Violation B refers to the June 9, 2008, IEP; Violation C refers to the September 30, 2008, IEP. Violations D through G do not contain any references to a specific IEP or date. However, the context of Violations D through G signifies that they refer to the September 30, 2008, IEP listed in Section C.

Respondent District's primary objection is with the petitioners' repeated assertion that the IEP teams "pre-determined" various offers and services. The respondent focuses on the slim contentions in the Violation section of the complaint. However, the charging allegations of the Violation section cannot be assessed in a vacuum. They are intended to be read within the framework of the entire complaint.

Though respondent would like more specific statements as to how certain placement and service offers were "pre-determined," the allegations of the complaint as a whole are sufficient to put the respondent District on notice of the issues forming the basis of the complaint. The Student's complaint identifies the issues, with sufficient facts and dates to

document the asserted problems, to permit the District to adequately respond to the complaint and knowledgeably participate in any resolution session or mediation.

Respondent also objects to the complaint's proposed resolutions, generally stating that the complaint does not establish a nexus between the requested remedies and the issues to which they allegedly relate. 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 resolution must be read within the framework of the entire complaint. The History section provides facts, dates, offers, and requests related to each IEP. Though District may disagree as to whether such asserted facts entitle Student to the proposed resolutions, the proposed resolutions are sufficiently well-defined. The petitioners have met the statutorily required standard of stating a resolution to the extent known and available to them at the time.

Therefore, Student's statement of the seven claims and the associated proposed resolutions is sufficient.

ORDER

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

Dated: March 3, 2009

/s/

Clifford H. Woosley
Administrative Law Judge
Office of Administrative Hearings