BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

BONITA UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023030936

ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

JUNE 2, 2023

On May 18, 2023, the Office of Administrative Hearings, referred to as OAH, granted Student's motion to amend Student's complaint. On May 31, 2023, Bonita Unified School District filed a Notice of Insufficiency as to the amended complaint.

APPLICABLE LAW

The named parties have the right to challenge the complaint's sufficiency. (20 U.S.C. § 1415(b) & (c).) 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: (1) describes the problem relating to the proposed change regarding the Student's identification, evaluation, or educational placement, or providing the Student a free appropriate public education; (2) includes facts about the problem; and (3) includes a proposed resolution to the extent known and available to the party at the time. (20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).) 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. (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." (Sen. Rep. No. 108-185, *supra*, at p. 34.) 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. (*Alexandra R. ex rel. Burke v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, CIV. 06-CV-0215-JL) 2009 WL 2957991[nonpub. Opn.]; *Escambia County Bd. 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, 8:04CV2657T24EAJ) 2005 WL 2850076 [nonpub. Opn.]; but cf. *M.S.-G v. Lenape Regional High School Dist. Bd. Of Educ.* (3d Cir. 2009) 306 Fed.Appx. 772, 775 [nonpub. Opn.].) Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge. (*Assistance to States for the Educ. Of Children with Disabilities & Preschool Grants for Children with Disabilities* (Aug. 14, 2006) 71 FR 46,540-46541, 46699.)

DISCUSSION

The facts alleged in Student's complaint are sufficient. Student's complaint identifies the issues and adequate facts about the problem to permit Bonita to respond and participate in a resolution session and mediation.

Issue 1 alleges that Bonita denied Student a FAPE by failing to "provide" evidence-based applied behavior analysis therapy. A read of Student's supporting facts suggests that "provide" means a failure to offer evidence-based applied behavior analysis therapy, but this point may be clarified at prehearing conference. Student makes to allegation of an exception to the two-year statute of limitations. Bonita has access to information regarding whether Bonita offered evidence-based applied behavior analysis therapy to Student and when during the statutory period at issue, and should be equipped to respond to Student's allegation. If Student intends for this allegation to apply to only a portion of the statutory period, this too may be clarified at prehearing conference. Issue 1 is sufficient.

Issue 2 alleges that Bonita denied Student a FAPE by failing to offer an individualized program, placement, services, and accommodations. Specifically, the complaint alleges that Bonita failed to amend the IEP in response to Student's maladaptive behavior until March 10, 2023, or to offer a behavior intervention plan.

In regard to placement, the complaint specifies that Bonita should have explained the home health, home instruction, independent study, and home hospital placement options to Parent. The complaint also specifies that Bonita's offers of placement at LeRoy Haynes, PortView, and Glendora Unified School District were inappropriate. The complaint states that Bonita placed Student on home health instruction in February 2023, and independent study on March 10, 2023. It is unclear as to whether these offers

of placement impact or limit the time frame of student's allegation of inappropriate placement during the statutory time period, but this point may be clarified at prehearing conference.

In regard to services, the complaint specifically refers to behavior, occupational therapy, mental health, speech, physical therapy, and adaptive physical education. It is unclear as to whether Student alleges that Bonita failed to offer these services in an IEP, failed to implement these provisions of an IEP, or both, but this point may be clarified at prehearing conference. Student complaint also alleges periods of no academic instruction to Student.

In regard to accommodations, the complaint specifically refers to Bonita's failure to furnish Student with Snap Type and a chrome book. Issue 2 is sufficient.

Issue 3 makes a compound allegation regarding assessments and goals. First, Issue 3 alleges that Bonita did not appropriately assess in all suspected areas of Student's disability, namely, "psychosocial/education (IQ)," behavior, speech, occupational therapy, visual processing, physical therapy, mental health, adaptive physical education, and central auditory processing. It is unclear as to whether Student intends "psychosocial/education (IQ)" to refer to a psychoeducational evaluation, but this point may be clarified at prehearing conference. At any rate, Bonita has access to information about any assessments it conducted of Student during the statutory period, as well as any assessments it declined to perform. The complaint also states that Bonita failed to consider the independent reports of Dr. Mancillas, a neuropsychologist, and the California Diagnostic Center.

Second, Issue 3 alleges that Bonita did not offer appropriate goals in the areas of "psychosocial/education (IQ)," behavior, speech, occupational therapy, visual processing,

physical therapy, mental health, adaptive physical education, and central auditory processing. Issue 3 is sufficient. The amended complaint, and the factual detail included therein, is sufficient to provide Bonita with an awareness of the issue to be litigated.

A 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 has met the statutorily required standard regarding proposed resolutions.

ORDER

1. The complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

IT IS SO ORDERED.

Claire Yazigi

Claire Yazigi
Administrative Law Judge
Office of Administrative Hearings