BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT on behalf of STUDENT, v. FAIRFIELD SUISUN UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2009010833 DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On February 25, 2009, Mother filed a Due Process Hearing Request[1] (Complaint) naming the District as the respondent.

On March 3, 2009, the Director of Special Education for the District filed a Notice of Insufficiency (NOI) as to Student's 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).)[2] The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of 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. (§ 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). (See H.R.Rep. No. 108-77, 1st Sess. (2003) [the House Committee on Education and the Workforce stated that the requirement of a clear and specific notice is essential to make the complaint process work in a fair and equitable

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

manner]; Sen. Rep. No. 108-185, 1st Sess. (2003) [the Senate Committee on Health, Education, Labor and Pensions stated that the purpose of the sufficiency requirement is to ensure that the respondent will have an awareness and understanding of the issues forming the basis of the complaint, to prevent the respondent from having to prepare for any and every issue that could possibly be raised, and to give the respondents sufficient information to provide specific responses and to participate in resolution sessions and mediation].) 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 unclear as to whether he is alleging six issues, or three issues with additional pages added as further explanation of Issues One and Two. In reading and re-reading the Complaint, it appears that the Complaint contains three claims, as follows:

Issue One: Student claims that on April 24, 2007, Student was beaten by campus police and security personnel. Student contends that this action violated Student's IEP by allowing mainstream staff to discipline Student, rather than by contacting specific staff and mother at the onset of unresolved/difficulty (sic). While the Complaint adequately describes a specific incident, it fails to allege a claim 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. Without such allegations, the Office of Administration has no jurisdiction to adjudicate Issue One. Issue One is insufficient and dismissed for lack of jurisdiction.

Issue Two: Student claims that on March 12, of an unknown year, Mother requested Student's homework assignments, and a teacher refused. In reading the Complaint in its entirety, it appears that Student is alleging that after the April 24, 2007, incident, he was deemed truant when he did not return to school for some period of time, and as a result of not having his assignments, he failed a class. The facts alleged in Issue Two fail to specify what year and period of time the homework was requested, and who refused to provide the homework. It is also noted that March 12 falls before April 24, and that alone provides insufficiency for the District to prepare a defense. Further, Student provides factual allegations regarding truancy charges and alleged perjury. The Office of Administrative Hearings has no jurisdiction over either truancy or perjury issues. While the Complaint contains no independent issue regarding these claims, it does request remedies related to the alleged truancy. Therefore, that portion of Issue Two related to the truancy and perjury are dismissed for lack of jurisdiction. The remainder of Issue Two is insufficient.

Issue Three: Student claims that a teacher failed Student in the second semester after Mother told the teacher she had filed a claim against him with teacher's credentialing (sic).

Again, Student has failed to identify the teacher or allege how failing a class is connected to a denial of FAPE. Issue Three is insufficient.

As discussed above, the District is entitled to know the basis of each claim and the nature of the specific allegations being made against it, with respect to each issue or problem, so that the District may be able to prepare a response, prepare for a resolution meeting, or prepare a defense for hearing. For the reasons described above, Student's complaint is insufficient because it does not comply with the requirements of Section 1415(b)(7).

ORDER

1. Pursuant to section 1415(c)(2)(D), Student's complaint is insufficiently pled, and the Districts notice of insufficiency is granted.

2. Pursuant to section 1415(c)(2)(E)(i)(II), Student shall be permitted to file an amended complaint regarding those portions of Issue Two and Three which have not been dismissed for lack of jurisdiction.[3]

3. 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.

4. If Student fails to file a timely amended complaint, the complaint will be dismissed.

5. All dates previously set in this matter are vacated.

Dated: March 04, 2009

/s/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings

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