

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 AMENDED DUE PROCESS  
COMPLAINT

On March 16, 2009, the Office of Administrative Hearings (OAH) received from Parent, on behalf of Student, an Amended Request for Mediation and Due Process Hearing (Amended Complaint) that named Fairfield-Suisun Unified School District (District).

On March 27, 2009, the District filed with OAH a Notice of Insufficiency and Motion to Dismiss regarding the Amended Complaint.

APPLICABLE LAW

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. (20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV); Ed. Code, § 56502, subd. (c)(1).) 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). 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 Amended Complaint is insufficient because it fails to provide the District with the required notice of a description of Student's problem with the District and the facts relating to the problem.

The Amended Complaint alleges that from October 16, 2006 to April 24, 2007, Student was denied written options to switch activities, remove himself from situations or ask for help in order to defuse specific triggers. The Amended Complaint further alleges that Student was beaten because his anxiety surpassed his ability to cope or benefit from academic involvement. The Amended Complaint further alleges that the beating prevented Student from returning to school, leading to truancy charges and recommendations for placements in other educational settings.

The Amended Complaint does not connect the factual descriptions contained in the pleading with the identification, assessment, educational placement or provision of a FAPE for Student. For example, the Amended Complaint does not describe how the denial of written options constituted a failure by the District to implement an IEP or the denial of a FAPE. The Amended Complaint does not provide details relating to the beating of Student and describe how this incident resulted in a denial of FAPE. The Amended Complaint likewise does not provide details regarding how the District's proposed alternative placements were inappropriate for Student. As such, the District cannot properly prepare for a resolution session, participate in mediation or defend at a due process hearing. In addition, the vagueness of the allegations in the Amended Complaint prevent the District from determining whether Student is making charges that fall outside the two-year statute of limitations for special education due process cases. (Ed. Code, § 56505, subd. (l).)

At the parent's request, OAH may appoint a mediator to assist in the identification of issues and proposed resolutions for hearing. (Ed. Code, § 56505, subd. (e)(6).) If Student's parent would like the services of a mediator to assist in identifying the issues and proposed resolutions, she should make that request to OAH.

## ORDER

1. Pursuant to section 1415(c)(2)(D), Student's Amended Complaint is insufficiently pled, and the District's Notice of Insufficiency is granted.
2. Pursuant to section 1415(c)(2)(E)(i)(II), Student shall be permitted to file a second amended complaint.<sup>1</sup>

---

<sup>1</sup> The filing of an amended complaint will restart the applicable timelines for a due process hearing.

3. The second 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 case will be dismissed.
5. All dates previously set in this matter are vacated.

Dated: March 31, 2009

*/s/*

---

TIMOTHY L. NEWLOVE  
Presiding Administrative Law Judge  
Office of Administrative Hearings