

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. 2009010836

DETERMINATION OF SUFFICIENCY
OF AMENDED DUE PROCESS
COMPLAINT

On February 23, 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). Student did not serve the District with the Amended Complaint. On March 17, 2009, OAH provided a copy of the Amended Complaint to the District.

On March 27, 2009, the District filed with OAH a Notice of Insufficiency and Motion to Dismiss as regards 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.)

California Education Code section 56501, subdivision (a), provides that a parent or public education agency may request a due process hearing when there is a proposal or a

refusal to initiate or change the identification, assessment, educational placement or the provision of a FAPE to the child, or when there is a disagreement regarding the availability of a program available for the child, including the question of financial responsibility, as specified in subsection (b) of Section 300.403 of Title 34 of the Code of Federal Regulations. (See also 20 U.S.C. § 1415(b)(6).)

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 Student was beaten unconscious on April 24, 2007, and that the District provided an "inappropriate education. . . to accommodate extreme disabilities as result of beating." As proposed resolutions, Student requests certain independent assessments and an educational program in line with the recommendations in such assessments. Ordinarily, OAH does not have the authority to hear and decide cases involving claims of beating, unless those claims raise issues concerning the provision of FAPE to the student. In this case, Student does not describe how the alleged April 2007 beating denied her a FAPE. In addition, the Amended Complaint does not identify the special education program(s) that the District offered and provided to Student after the beating incident, how such program was inappropriate, or the time period involved. Without further facts and details, the District is unable to hold a resolution session, participate in mediation, or prepare a defense in this matter. In addition, further clarification of Student's charges with regard to the April 2007 beating incident is required, as the District has provided evidence that, in a previous special education due process administrative case, Student made similar charges which were settled through a resolution session agreement. (see Ed. Code, § 56501.5, subd. (f).) Student cannot repeat claims that were settled in the resolution agreement.

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 this matter, 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.¹

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 second amended complaint, the case will be dismissed.

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

Dated: April 1, 2009

/s/

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

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