

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN MATEO-FOSTER CITY UNIFIED
SCHOOL DISTRICT and SAN MATEO
COUNTY OFFICE OF EDUCATION.

OAH CASE NO. 2010120883

AMENDED¹ ORDER OF
DETERMINATION OF
INSUFFICIENCY OF AMENDED DUE
PROCESS COMPLAINT

On December 24, 2010, Lawrence Siegel, attorney on behalf of Student, filed a Due Process Hearing Request² (complaint) naming the San Mateo-Foster City Unified School District (District) and the San Mateo County Office of Education (SMCOE). On January 7, 2011, SMCOE filed a Notice of Insufficiency (NOI) as to the Student's complaint. On January 10, 2011, Administrative Law (ALJ) Judge Glynda B. Gomez granted SMCOE's NOI without prejudice.

On January 17, 2011, Student filed an amended complaint that proposes filing additional information to be used in conjunction with the original complaint. On February 2, 2011, SMCOE filed their second NOI as to Student's complaint. On February 4, 2011, Student filed a response to SMCOE's NOI.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.³ 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).

¹ The order has not been changed except to vacate all currently pending dates.

² 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).

³ 20 U.S.C. § 1415(b) & (c).

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.⁴ 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.⁵

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁶ 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.⁷ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁸ The determination of sufficiency is made on the face of the complaint. (Ed. Code § 56502, subd. (d).)

DISCUSSION

Student’s amended complaint incorporates and alleges the three claims in the original complaint. Instead of filing a new and complete amended complaint, Student attempts to clarify the original complaint in its amended complaint by stating: “Petitioner amends the original complaint in regards to SMCOE and incorporates herein all facts alleged in the original complaint **except** that it is not alleged that SMCOE had committed any due process violations as alleged against San Mateo/Foster City School District (SMFC)” (emphasis in original). The exception provided requires SMCOE to determine what portions of the three

⁴ 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

⁵ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁶ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁷ *Alexandra R. v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, No. 06-cv-0215-JL) 2009 WL 2957991 at p.3 [nonpub. opn.]; *Escambia County Board 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, No. 8:04CV2657T24EAJ) 2005 WL 2850076 at p. 3[nonpub. opn.] ; but cf. *M.S.-G. v. Lenape Regional High School Dist.* (3d Cir. 2009) 306 Fed.Appx. 772, at p. 3[nonpub. opn.].

⁸ Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed.Reg. 46540-46541, 46699 (Aug. 14, 2006).

claims originally presented are “due process violations.” This method of bifurcated pleading is confusing and fails to provide SMCOE with sufficient information to prepare for hearing or to participate in resolution sessions and mediation.

Student’s complaint is insufficiently pled in that it fails to provide SMCOE with the required notice of a description of the problem and the facts relating to the problem. In addition, the bifurcation of pleadings renders both the original complaint and the “amended complaint” insufficient as to all parties.

ORDER

1. Student’s complaint is insufficiently pled under section Title 20 United States Code 1415(c)(2)(D).
2. Student shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).⁹
3. The amended complaint shall comply with the requirements of Title 20 United States Code 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 matter shall be dismissed.
5. All pending dates are vacated.

Dated: February 8, 2011

/s/

MICHAEL G. BARTH
Administrative Law Judge
Office of Administrative Hearings

⁹ The filing of an amended complaint will restart the applicable timelines for a due process hearing.