

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN FRANCISCO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011050982

ORDER OF DETERMINATION OF
INSUFFICIENCY OF DUE PROCESS
COMPLAINT AND DENIAL OF
INJUNCTIVE RELIEF

On May 25, 2011, Parent on behalf of Student (Student) filed a Due Process Hearing Request¹ (complaint) naming the San Francisco Unified School District (District).

On June 1, 2011, the District filed a Notice of Insufficiency (NOI) as to Student's complaint. Student has not filed a response or opposition to the District's NOI.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.² 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 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.³ These

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 20 U.S.C. § 1415(b) & (c).

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

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.⁴

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁵ The pleading requirements should be liberally construed in light of the broad remedial purposes of the Individuals with Disabilities Education Improvement Act (IDEIA) and the relative informality of the due process hearings it authorizes.⁶ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁷

DISCUSSION

Student’s complaint is comprised of two claims, which are both insufficiently pled. The complaint is insufficiently pled in that it fails to provide the District with the required notice of a description of the problem and the facts relating to the problem.

With respect to Issue One, Student contends that his placement and services at his current non-public school (NPS or Erikson) are in jeopardy because the District has decided to remove Student from Erikson. Student’s complaint fails to identify the specific IEP, and the portions of that IEP which are allegedly in jeopardy by the removal from Erikson, and how such removal impairs Student’s education. The complaint fails to identify the alleged reason for removal, and why the District may not or should not change the NPS placement.

With respect to Issue Two, Student has concluded that his removal from Erikson has been done bypassing his rights, entitlements and protections under the IDEIA. While Student indicates he has had no opportunity to oppose the move, Student has failed to provide the

⁴ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁵ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁶ *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.].

⁷ 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).

legal basis for such objection, and the factual allegations to support his conclusion. The primary question is whether the District's alleged action is a change of placement or a change of service provider. If the later, does it rise to the level of a denial of FAPE, and if so, what is the factual basis?

Student's proposed resolutions request that the District be enjoined from removing Student from Erikson, and that Student continue his placement at Erikson. 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).) The proposed resolution stated in Student's complaint is not well-defined. Although Student may state a resolution to the extent known, it is unclear as to whether OAH has jurisdiction over placement at a specific NPS or that legally such remedy is available to him.

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).⁸
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 complaint will be dismissed.
5. As Student's complaint is being dismissed, Student's request for injunctive relief is moot, and therefore denied without prejudice.
5. All dates previously set in this matter are vacated.

Dated: June 3, 2011

/s/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings

⁸ The filing of an amended complaint will restart the applicable timelines for a due process hearing.