

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. 2011071056

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On July 27, 2011, Student filed a Due Process Hearing Request¹ (complaint) naming San Francisco Unified School District. On July 28, 2011, Student filed a letter entitled Missing Information on Due Process Requests. On July 29, 2011, District filed a Notice of Insufficiency (NOI) as to Student's complaint.

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 due process complaint shall include the name and residence address of the child and the name of the school the child is attending.³ 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

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)(I).

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.

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

DISCUSSION

Student’s complaint is insufficiently pled in that it fails to provide District with the required residence of the child, notice of a description of the problem, the facts relating to the problem, and a proposed resolution other than grant of a Stay Put motion.

On July 27, 2011, Student filed a complaint that failed to include his home address. On July 28, 2011, Student’s attorney wrote to OAH to provide “necessary information,” Student’s home address and date of birth. Because Student must include his home address in his complaint to establish residency, Student’s complaint was technically not sufficient, even if the insufficiency was cured by the letter. However, as discussed below, the complaint was insufficient for other reasons.

Student’s complaint alleges one issue for hearing regarding the appropriateness of District’s proposal for the 2011-2012 school year to move Student from Erikson School, an NPS, to another placement. The complaint does not identify: Student’s eligibility for special education services; Student’s grade level; how Erikson meets Student’s unique needs; any facts surrounding Erikson’s ability to accept enrollment for the coming school year; and why District cannot meet Student’s unique needs at another NPS. In essence, the complaint appears to be arguing for Stay Put without fully setting out a denial of a FAPE claim. Notably, both District and OAH interpreted the complaint as more of a Stay Put motion than a complaint, yet Student has filed a letter on August 2, 2011, stating that the complaint was not intended to be a Stay Put motion.

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).

As discussed above, a responding party 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 responding party may be able to prepare a response, prepare for a resolution session, 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).

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 well-defined, yet like the substantive allegations, appears to be limited to a request for Stay Put during due process proceedings. To the extent Student alleges a denial of a FAPE, he has not met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

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 complaint will be dismissed.

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

Dated: August 1, 2011

/s/

CLARA L. SLIFKIN
Administrative Law Judge
Office of Administrative Hearings

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