

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. 2012040652

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On April 12, 2012, Parent, on behalf of Student, filed a Request for Due Process Hearing<sup>1</sup> (complaint) naming Fairfield-Suisun Unified School District (District). On April 27, 2012, District timely 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.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

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<sup>1</sup> 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).

<sup>2</sup> 20 U.S.C. § 1415(b) & (c).

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

<sup>4</sup> 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.”<sup>5</sup> 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.<sup>6</sup> Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.<sup>7</sup>

## DISCUSSION

Student’s complaint alleges five (5) claims in the complaint,<sup>8</sup> some of which are sufficient and some which are insufficient. The issues are discussed below.

Issue One alleges that Student previously entered into a settlement agreement, at mediation in OAH case no. 2012010272, which was withdrawn as a consequence. Student asserts that he entered into the agreement because of an alleged misrepresentation on the part of a District representative. Student seeks an order allowing him to rescind the settlement. Issue One does not assert facts as to how the rescission of the prior settlement agreement is a problem relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of Student, or the provision of a free appropriate public education (FAPE) to Student. Issue One is insufficient.

The form complaint’s Issue Two is blank.

In Issue Three, Student asserts that Deaf/Hard of Hearing services are not being provided and that what is being providing is interfering with Student’s ability to learn, referring to inappropriate removal of Student’s hearing aids related to his FM system. District contends Issue Three is unclear because one cannot determine if Student is asserting

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<sup>5</sup> Sen. Rep. No. 108-185, *supra*, at p. 34.

<sup>6</sup> *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.].

<sup>7</sup> 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).

<sup>8</sup> The form complaint’s Issue 2 is blank. For clarity, the discussion addresses the issues as numbered in the form complaint, even though Issue Two is blank.

that the DHH services are not being provided at all or that the services are not being administered properly. Student asserts as resolution that his hearing aids not be removed. Issue Three adequately indicates that Student's believes the District is not properly providing services related to his hearing aids and FM services. District has sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation of this issue. Issue Three is sufficient.

Student alleges in Issue Four that Parent requested, at the October 2011 IEP, an assistive technology "caseworker" (AT) contact her to discuss mainstreaming and hearing aids, further stating that her request was not granted. As resolution, she offers to meet with the AT at the District's offices. District asserts Issue Four is insufficient because Student resolved all issues through February 15, 2012, pursuant to the prior settlement agreement in OAH no. 201210272. District's assertion of insufficiency is actually a request to dismiss based upon evidence attached to its NOI. However, the analysis of the complaint when an NOI is filed is limited to the sufficiency of the allegation as set forth in the complaint and is not based on information outside the complaint. Therefore, as pled in the complaint, Issue Four is sufficient.

Student generally alleges in Issue Five that an individual, which the complaint identifies by name, assessed Student without Parent's permission, further asserting a confusing narrative regarding a communication log, changes in caseworkers, and the improper use of authority to benefit the county office of education at the February 12, 2012. Student does not propose any resolution. District states that Issue Five does not indicate whether it is referring to informal encounters or formal assessments. District further asserts that the identified individual does not do assessments. Issue Five does not enunciate an issue, but instead asserts facts without stating how they amount to a problem regarding the provision of a FAPE for Student. Issue Five is insufficient because it fails to provide District an awareness and understanding of the basis of the issue's complaint.

In Issue Six, Student asserts that "[w]hen new caseworkers are added on or removed, parent is not notified," further stating that this caused Student confusion and dramatic behavior changes. The proposed resolution to Issue Six is to incorporate DHH services, with trained professional, into Student's daily curriculum. District contends Issue Six does not provide enough information to respond and prepare for hearing, noting that District does not employ or use any individual called a "caseworker."

Issue Six lacks sufficient factual assertions regarding time, the related services, and the service providers which would enable the District to prepare a response. The proposed resolution does not have any apparent relation to Issue Six's facts. Issue Six is insufficient.

## ORDER

1. Issue Three and Four are sufficient.

2. Issues One, Five and Six are insufficient.

3. Student shall be permitted to file an amended complaint not later than 14 days from the date of this order.<sup>9</sup> Parents are advised that under Education Code section 56505, a parent who is not represented by an attorney may request that the Office of Administrative Hearings provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. Parents are encouraged to contact OAH for assistance in amending their due process hearing request.

4. If Student does not file an amended complaint within 14 days, the hearing shall proceed on Issues Three and Four only.

Dated: April 30, 2012

/s/

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CLIFFORD H WOOSLEY  
Administrative Law Judge  
Office of Administrative Hearings

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