

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SOLANO COUNTY OFFICE OF
EDUCATION.

OAH Case No. 2016050225

ORDER GRANTING NOTICE OF
INSUFFICIENCY; GRANTING LEAVE
TO AMEND DUE PROCESS
COMPLAINT WITHIN FOURTEEN
DAYS; AND CONTINUING ALL
DATES

On May 4, 2016, Parent on behalf of Student filed a Due Process Hearing Request¹ (complaint) with the Office of Administrative Hearings. Student did not identify the party or parties to be named, but rather listed the address of Solano County Office of Education. OAH's initial Scheduling Order identified Fairfield-Suisun Unified School District as the named party. Therefore, Solano County was not served with the original Scheduling Order. On May 12, 2016, Fairfield-Suisun filed a motion requesting that it be dismissed as a party as Student did not identify it as a party in his complaint and had not provided Fairfield-Suisun with a copy of the complaint. Also on May 12, 2016, within the same pleading, Fairfield-Suisun filed in the alternative a Notice of Insufficiency.²

On May 13, 2016, OAH dismissed Fairfield-Suisun as a party; determined that this matter would proceed as to Solano County; and denied the notice of insufficiency as moot. On May 19, 2016, OAH served Solano County with copies of the order determining it to be the named party in this matter, along with an Amended Scheduling Order listing Solano County as the sole respondent. On June 1, 2016, Solano County filed a Notice of Insufficiency as to the original complaint.³

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 U.S.C. section 1415(b)(7)(A).

² The parties are hereby advised that every motion as well as every responding paper filed with OAH must be filed as a separate, single motion or response. Further, each document must be signed, clearly identify the OAH case number and name of the case, and include a proof of service identifying how and when the other party was served with a copy. A notation that the other party was provided a carbon copy ("cc") is not sufficient. OAH may decline to file any document not meeting these requirements.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint. (20 U.S.C. § 1415(b) & (c).) 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).

The complaint is deemed sufficient unless a party notifies the Office of Administrative Hearings and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements. (20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).)

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 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).) 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. (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.” (Sen. Rep. No. 108-185, *supra*, at p. 34.) 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. (*Alexandra R. ex rel. Burke v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, CIV. 06-CV-0215-JL) 2009 WL 2957991[nonpub. opn.]; *Escambia County Bd. 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, 8:04CV2657T24EAJ) 2005 WL 2850076 [nonpub. opn.]; but cf. *M.S.-G v. Lenape Regional High School Dist. Bd. of Educ.* (3d Cir. 2009) 306 Fed.Appx. 772, 775 [nonpub. opn.].) Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge. (*Assistance to States for the Educ. of Children with Disabilities & Preschool Grants for Children with Disabilities* (Aug. 14, 2006) 71 FR 46,540-46541, 46699.)

³ Although Fairfield-Suisun joined in this Notice of Insufficiency, Fairfield-Suisun is not a party to this action per the May 13, 2016 order of dismissal. The Notice of Insufficiency was also filed as to a purported “cross-filing” by Student identifying five separate issues. Student has not requested leave to amend his complaint to add additional claims or to add Fairfield-Suisun as a party. OAH has issued a separate Notice of No Action as to Student’s motion to add claims which was filed in a separate action initiated by Fairfield-Suisun in OAH Case Number 2016050221.

DISCUSSION

Student's complaint was filed on May 4, 2016, and reflects that Solano County was served on that date. However, Student did not clearly identify the party or parties to be named and the original scheduling order identified Fairfield-Suisun as the respondent rather than Solano County. OAH served Solano County with its May 13, 2016 order dismissing Fairfield-Suisun and naming Solano County as the sole respondent on May 19, 2016. Therefore, as of May 19, 2016, Solano County was on notice that it was a named party to this action. Solano County's notice of insufficiency was filed with OAH on June 1, 2016. This is more than 15 days after it received Student's complaint. However, the date of June 1, 2016, is within 15 days of May 19, 2016, the date Solano County was on notice that it was a named party. Therefore, Solano County's notice of insufficiency, under the circumstances of this case, is deemed timely.

Student identifies one issue for hearing as follows:

“The Student and the Parents of the Student have first hand knowledge that from August 2015 to present date the [S]tudent or the [S]tudents [sic] [P]arent's [sic] have been subjected to [h]arassment, discrimination, intimidation and bullied all while the [S]tudent was attending his placement at Green Valley Middle School. As a result; [sic] the alleged actions has [sic] affected the [S]tudents [sic] right to his FAPE.”

Student's May 4, 2016 complaint is insufficiently pled. Student has failed to specify any facts in support of this claim. Specifically, Student has not identified what the alleged acts of discrimination, harassment, intimidation, or bullying were; who engaged in these acts, and to whom they were directed; when and where the acts occurred; and how these acts specifically affected Student's right to a free appropriate public education. Therefore, Solano County was not on notice of this claim and the complaint is insufficient. Further, Student fails to identify any proposed resolution. As such, Student has not met the statutorily required standard of stating a proposed resolution to the issue to the extent known and available to him at the time. Student will be given an opportunity to amend his complaint to address these deficiencies.

In order to afford Student 14 days to amend his complaint, the current prehearing conference and hearing dates are continued. The prehearing conference will now be held on June 27, 2016, at 10:00 a.m., and the due process hearing will begin on July 6, 2016, at 9:30 a.m.

MEDIATOR ASSISTANCE

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. (Ed. Code, §

56505.) Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

ORDER

1. Student's complaint is insufficiently pled under title 20 of the United States Code, section 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).⁴
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. All previously set dates are vacated. The prehearing conference is continued to June 27, 2016, at 10:00 a.m. The due process hearing is continued to July 6, 2016, at 9:30 a.m. and will continue day to day, Monday through Thursday, as needed at the discretion of the administrative law judge.
5. If Student fails to timely file an amended complaint, this case will be dismissed and all pending dates vacated.

DATE: June 6, 2016

DocuSigned by:

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THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings

⁴ The filing of an amended complaint will restart the applicable timelines for a due process hearing.