

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. 2009010817

DETERMINATION OF SUFFICIENCY
OF SECOND AMENDED DUE
PROCESS COMPLAINT AND ORDER
DENYING MOTION TO BIFURCATE

On January 29, 2009, the Office of Administrative Hearings (OAH) received from Parent, on behalf of Student, a Request for Mediation and Due Process Hearing (Complaint) that named Fairfield-Suisun Unified School District (District). The Complaint contained three issues.

On February 6, 2009, the District filed with OAH a Notice of Insufficiency regarding the Complaint. On February 11, 2009, OAH issued an Order which upheld the sufficiency of Issue One in the Complaint, but found that Issues Two and Three were insufficient. The Order gave Student the right to file an amended pleading in the matter.

On February 23, 2009, Parent of behalf of Student filed with OAH an Amended Request for Mediation and Due Process Hearing (Amended Complaint) that named the District.

On March 3, 2009, the District filed with OAH a Notice of Insufficiency regarding Issues Two and Three in the Amended Complaint. On March 4, 2009, OAH issued an Order that found that Issues Two and Three in the Amended Complaint were insufficient, and gave Student the right to file a further amended pleading.

On February 20, 2009, the District filed a motion to dismiss the entire case. On February 24, 2009, Student filed a motion to bifurcate Issue One from Issues Two and Three. On March 11, 2009, OAH issued an Order Denying Motion To Dismiss, which noted that Student's motion to bifurcate the issues was moot because Issues Two and Three were dismissed in the March 4, 2009 Order.

On March 17, 2009, Parent on behalf of Student filed with OAH a Second Amended Request for Mediation and Due Process Hearing (Second Amended Complaint) that named

the District.¹ The Second Amended Complaint contained only Student's Issues Two and Three, and requested that those issues be bifurcated from Issue One.

On March 27, 2009, the District filed with OAH a Notice of Insufficiency and Motion to Dismiss as regards the entirety of the Second Amended Complaint.

APPLICABLE LAW

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. (20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV); Ed. Code, § 56502, subd. (c)(1).) A party is not entitled to a due process hearing until his or her Complaint meets these requirements. (20 U.S.C. § 1415(b)(7)(B); Ed. Code § 56502, subd. (c)(2).)

The purpose of these requirements is to promote fairness by providing the responding party with sufficient information to make a specific response to the complaint, and to participate in a resolution session and mediation. In addition, fundamental principles of due process apply to administrative proceedings in special education matters. The responding party is entitled to know the nature of the specific allegations being made against it, such that the responding party may be able to prepare a defense. (*Tadano v. Manney* (9th Cir. 1947) 160 F.2d 665, 667; *Hornsby v. Allen* (5th Cir. 1964) 326 F.2d 605, 608.)

OAH may bifurcate a case in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to judicial economy and expediency. (See Cal. Code Civ. Proc., § 1048, subd. (b).)

DISCUSSION

Student's Second Amended Complaint is insufficient because it fails to provide the District with the required notice of a description of Student's problems and the facts relating to the problems.

The documents on file in this case indicate that the District has not determined that Student is a pupil with a disability who is eligible to receive a special education program. The Second Amended Complaint refers to Issue One in the initial Complaint and Amended Complaint in this matter through the reference "Bifocate [sic] from Issue 1." Issue One in

¹ Although Student attached numerous pages of exhibits to her amended complaint, those documents are evidence to be presented at a hearing, and do not take the place of adequate descriptions of necessary information in the complaint.

the Complaint and Amended Complaint concerned the fact that the District allegedly placed Student on home-hospital in September 2008, but did not provide a teacher or curriculum. In order for the District to have denied Student a FAPE in the circumstances described in Issue One, Student would need to prove that she was eligible for special education.

However, Issue Two in the Second Amended Complaint does not sufficiently state a claim that Student should have been determined eligible for special education. Instead, Issue Two in the Second Amended Complaint refers to a resolution agreement for Student's fifth grade, an AB 3632 referral, accommodations through a behavioral plan, the extended school year, the District ignoring something for Student's sixth grade, and the fact that Student was not able to stay in class due to a return of phobias and anxiety. It is also not clear for what specific time period Student is alleging that she should have been found eligible.

On March 11, 2009, in an Order Denying Motion to Dismiss, OAH held the following:

In order for the District to have denied Student a FAPE in the circumstances described in her first problem, Student would need to prove that she was eligible for special education. Student's second problem is the issue of eligibility. Thus, the two issues are related. District's motion to dismiss is therefore premature and involves its defense to the action. The facts regarding Student's eligibility are entitled to be litigated if they are sufficiently described. Based on the foregoing, Student is entitled to file another amended complaint on or before March 18, 2009, to more fully describe the eligibility problem (as well as her third problem).

Thus, because Student has not clearly stated an eligibility issue, Issue One is likewise insufficient because it is dependent on first establishing her eligibility for special education.

In order to submit a sufficient request for due process hearing, Student must simply and clearly describe facts related to the problem of her eligibility, including what time period is in dispute, and when the District knew or should have known that she was eligible. A sufficient pleading must also set forth the proposed resolutions, including compensatory education and accommodations, that the Student is seeking. Without a proper description of the problem in this case, the District is unable to hold a resolution session, participate in mediation, and prepare a defense of the matter.

Moreover, Student's request to bifurcate Issue One from Issue Two is denied. It appears that Student is seeking to have OAH hear Issue One without first determining whether she was eligible for special education. As discussed above, Student's FAPE claim in Issue One is dependent upon OAH first determining that she was eligible for special education during the time period at issue. Hence, bifurcating the issues in the manner

suggested by Student would be contrary to judicial economy and would not further the interests of justice.²

At the parent's request, OAH may appoint a mediator to assist in the identification of issues and proposed resolutions for hearing. (Ed. Code, § 56505, subd. (e)(6).) If Student's parent would like the services of a mediator for such assistance, she should make that request to OAH.

ORDER

1. Pursuant to section 1415(c)(2)(D), Student's Second Amended Complaint is insufficiently pled, and the District's Notice of Insufficiency is granted.
2. Pursuant to section 1415(c)(2)(E)(i)(II), Student shall be permitted to file a third amended complaint.³
3. The third amended complaint shall comply with the requirements of 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 third amended complaint, this case will be dismissed.
5. All dates previously set in this matter are vacated.

Dated: April 1, 2009

/s/

TIMOTHY L. NEWLOVE
Presiding Administrative Law Judge
Office of Administrative Hearings

² Nothing in this order prohibits either party from seeking to bifurcate the issues to hear the eligibility claim first, assuming that Student files a third amended complaint sufficiently stating her eligibility claim.

³ The filing of an amended complaint will restart the applicable timelines for a due process hearing.