

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. 2009010836

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On January 29, 2009, Parent filed a Due Process Hearing Request¹ (complaint), on behalf of Student, against the Fairfield Suisun Unified School District (District).

On February 6, 2009, Andrew Green-Ownby, Director of Special Education for District, filed a Notice of Insufficiency (NOI) as to Student's complaint.

APPLICABLE LAW

A party against whom a due process hearing request has been filed has the right to challenge the sufficiency of the complaint. (20 U.S.C. § 1415(b) & (c).)² The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of section 1415(b)(7)(A) and Education Code section 56502, subdivision (c)(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 (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. (§ 1415(b)(7)(A)(ii)(III) & (IV).) The purpose of these requirements is to promote fairness by providing respondents with a specific understanding of the allegations and to provide a school district with sufficient information to make a specific response to the complaint as required by section 1415(c)(2)(B), and to participate in a resolution session and mediation under section 1415, subsections (e) and (f). (See H.R.Rep. No. 108-77, 1st Sess. (2003); Sen. Rep. No. 108-185, 1st Sess. (2003).) In addition, fundamental principles of due process apply to administrative proceedings in special education matters. The party against whom a

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 All statutory citations are to Title 20 United States Code unless otherwise noted.

complaint is filed is entitled to know the nature of the specific allegations being made against it, such that he or she 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.)

DISCUSSION

Student's complaint in this matter is insufficiently pled because it fails to provide District with the required notice of a description of the problem and the facts relating to the problems for the reasons stated below.

With respect to Issue 1, Student's claim appears to allege that school staff beat Student on school grounds, "resulting in further disabling an already disabled student." Student's claim is not sufficiently clear to enable District to prepare a defense. For example, the claim fails to state the school year or semester involved, whether it was Student or her sibling who was allegedly beaten, which staff person or persons engaged in this action, how Student was further disabled, and how this denied Student a free appropriate public education.

Regarding Issue 2, Student's claim appears to allege that after a due process request was filed, District falsely reported truancy charges against Student. This claim is insufficiently clear to enable District to prepare a defense. For example, Student fails to specify when the relevant due process request was filed, what complaints and Individualized Education Programs were involved, what school year was involved, and how the filing of truancy charges denied Student a free appropriate public education.

Regarding Issue 3, Student's claim appears to be that District failed to provide an appropriate education "after beating of child" and failed to provide "compensatory education as agreed in April 08 due process resolution." This claim is insufficiently clear to enable District to prepare a defense as well. For example, Student fails to identify the school year during which District allegedly failed to provide an appropriate education, the reasons why the education provided by District was not appropriate, and how this denied Student a free appropriate public education. As to District's failure to provide compensatory education, Student fails to identify the compensatory education that District was obligated to provide, and fails to state whether some of it, or none of it, was provided.

Regarding Issue 4, Student's claim appears to be that she suffered injuries to her rotator cuff, "L5 back damage," and injury to her neck, head, shoulder, knees, ankle and hand as a "result of assault." This claim is insufficiently pled because Student fails to identify when the assault occurred, who committed the assault, and how this denied Student a free appropriate public education.

Student complaint is accompanied by approximately 80 pages of attachments. While information may be gleaned from these attachments to provide some of the information that is not stated in the complaint, Section 1415, subsection (c)(2)(D) requires that the sufficiency of the complaint be evaluated based on the face of the complaint. Moreover, given the

number of attachments, it would be impossible for District to determine which attachments and facts apply to which claims in order to prepare a defense.

As discussed above, District 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 District 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 contain the required factual support and, therefore, it does not comply with the requirements of Section 1415(b)(7) and Education Code section 56502, subdivision (c)(1).

At the parent's request, a mediator may be appointed to assist a Student who does not have an attorney, to identify issues and proposed resolutions for hearing. (Ed. Code, § 56505, subd. (e)(6).) If Student's parent would like the services of a mediator to assist in this matter, she should make that request to OAH.

ORDER

1. Pursuant to section 1415(c)(2)(D), Student's complaint is insufficiently pled, and District's notice of insufficiency is granted.
2. Pursuant to section 1415(c)(2)(E)(i)(II), Student shall be permitted to file an amended complaint.³
3. The 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 amended complaint, the complaint will be dismissed.
5. All dates previously set in this matter are vacated.

Dated: February 18, 2009

/s/

DEBRA HUSTON
Administrative Law Judge
Office of Administrative Hearings

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