

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. 2009040516

DETERMINATION OF SUFFICIENCY  
OF DUE PROCESS COMPLAINT

On April 10, 2009, Parent on behalf of Student<sup>1</sup> (Student) filed a Due Process Hearing Request<sup>2</sup> (complaint) naming San Francisco Unified School District (District) as the respondent.

On April 27, 2009, the District filed a Notice of Insufficiency (NOI) as to Student's complaint. The District contends that the complaint is vague and fails to establish a violation of the Individuals With Disabilities Education Act (IDEA) and state law, fails to state a relevant timeframe for any alleged violation, and fails to propose a resolution of the problem.

APPLICABLE LAW

The respondent to a due process hearing request has the right to challenge the sufficiency of the complaint. (20 U.S.C. § 1415(b) & (c).)<sup>3</sup> The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of 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. (§ 1415(b)(7)(A)(ii)(III) & (IV).) The purpose of these requirements is to promote fairness by

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<sup>1</sup> Parent is actually a Foster Mother/ Caregiver and Educational Surrogate for Student, who is a dependent of DHS San Francisco.

<sup>2</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>3</sup> All statutory citations are to Title 20 United States Code unless otherwise noted.

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) [the House Committee on Education and the Workforce stated that the requirement of a clear and specific notice is essential to make the complaint process work in a fair and equitable manner]; Sen. Rep. No. 108-185, 1st Sess. (2003) [the Senate Committee on Health, Education, Labor and Pensions stated that the purpose of the sufficiency requirement is to ensure that the respondent will have an awareness and understanding of the issues forming the basis of the complaint, to prevent the respondent from having to prepare for any and every issue that could possibly be raised, and to give the respondents sufficient information to provide specific responses and to participate in resolution sessions and mediation].) In addition, fundamental principles of due process apply to administrative proceedings in special education matters. The respondent is entitled to know the nature of the specific allegations being made against it, such that respondent 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 alleges claims, as follows: she has been denied a free appropriate public education (FAPE) because the Individual Education Program proposed by the District for school year 2009-2010 was inappropriate in that Student requires a program that is a functional, life-skills focused program because Student exhibits non-compliant and assaultive behavior. Student contends that the proposed placement is on an open campus and is too academically focused.

The facts alleged in Student's complaint are sufficient to put the District on notice of the issues forming the basis of the complaint. Student's complaint identifies the issues and sufficient facts and dates to document the problem to permit District to adequately respond to the complaint and attempt to participate in a resolution session and mediation. Therefore, Student's statement of the claim is sufficient.

A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (§1415(b)(7)(A)(ii)(IV).) Student's complaint fails to state a proposed resolution of the problem to the extent known or available to the party at the time. It is unclear what resolution of the problem Student seeks. Student's complaint is insufficient for its failure to include a proposed resolution of the problem identified in the complaint.

ORDER

1. Pursuant to section 1415(c)(2)(D), Student's 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 an amended complaint.<sup>4</sup>
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: April 29, 2009

/s/

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ROBERT HELFAND  
Administrative Law Judge  
Office of Administrative Hearings

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