

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. 2009040612

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On April 14, 2009, Parent, on behalf of Student, filed a Request for Mediation and Due Process Hearing¹ (complaint) naming San Francisco Unified School District as the respondent.

On November 02, 2007, San Francisco Unified School District (District) filed a Notice of Insufficiency (NOI) as to Student's complaint.

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).)² 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 providing respondents with an understanding of the allegations and to provide a school district with sufficient

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.

information to make a response to the complaint as required by section 1415(c)(2)(B), and to participate in a resolution session, mediation, and hearing under section 1415, subsections (e) and (f).

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.)

Though sufficiency review is triggered by a respondent's notice (§§ 1415(b)(2)(A) & (C)), and a petitioner may respond, the hearing officer shall make a sufficiency determination on the face of the request for due process hearing (Ed. Code, § 56502, subd. (d)(1)).

DISCUSSION

Student's complaint alleges two violations by District, followed by references to the Student's IEP and a section for proposed resolution. Student attaches the January 5, 2009, IEP as an exhibit to complaint.

District asserts that: the allegations fail to establish a violation under the IDEA or state laws; Student does not provide a relevant timeframe; and the proposed resolutions do not meet the statutory standard.

The Student's complaint is sufficient.

Though the three sections are somewhat intermixed in its factual narrative, the complaint generally asserts that proposed changes to the Student's special day class (SDC), especially those concerning the classroom paraprofessional, are in violation of Student's IEP. As for the timeline, Student is quoting from the current, January 2009 IEP, which is attached.

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, a mediation, and due process hearing.

Therefore, Student's statement of the two claims is sufficient.

The proposed resolutions meet the statutorily required standard.

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 proposed

resolutions are that the SDC class remains in its present format and that the paraprofessional continues in the SDC, without a reduction or change in hours.

The proposed resolutions stated in Student's complaint are not well-defined. However, Student has met the statutorily required standard of stating a resolution to the extent known and available to Student at the time

ORDER

1. The complaint is deemed sufficient under section 1415(b)(7)(A)(ii).
2. All mediation, prehearing conference, and hearing dates in this matter shall remain on calendar.

Dated: May 04, 2009

/s/

CLIFFORD H WOOSLEY

ALJ

Office of Administrative Hearings