

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS on behalf of STUDENT,

v.

SAN MATEO-FOSTER CITY SCHOOL
DISTRICT.

OAH CASE NO. 2009060261

DETERMINATION OF SUFFICIENCY
OF FIRST AMENDED DUE PROCESS
COMPLAINT

On June 3, 2009, Parents, on behalf of Student, filed a Due Process Hearing Request (Complaint), against the San Mateo-Foster City School District (District).

On July 6, 2009, Student filed a Request to Amend Complaint (Request to Amend). Specifically, Student seeks to exclude “compliance errors within one year of the date of [his Complaint].” Student’s Complaint would continue to include “the free and appropriate public education dispute (both past and current), the least restrictive environment dispute, and the dispute over proper referral, assessment and initial placement procedures . . . Timeline should cover August 2007-current.”

On July 10, 2009, District filed a written response to Student’s Request to Amend in which District stated that it did not oppose Student’s Request to Amend, but believed the language in Student’s Request to Amend was inadequate for District to discern which issues remained in Student’s Complaint.

On July 15, 2009, Administrative Law Judge S. Smith granted Student’s Request to Amend, vacating dates and setting the timeline to recommence as of this date.

On July 21, 2009, District filed a Notice of Insufficiency (NOI) as to Student’s first 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. (§ 1415(b)(7)(A)(ii)(III) & (IV);¹ Ed. Code, § 56502, subd. (c)(1).)

The complaint is deemed sufficient unless the party against whom the complaint has been filed notifies the Office of Administrative Hearings (OAH) and the other party, in writing, within 15 days of receiving the complaint, that the complaint has not met the notice requirements. (§ 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).) Section 1415(c)(2)(D) requires that the sufficiency of the complaint be evaluated based on the face of the complaint.

The party against whom the complaint has been filed is entitled to know the nature of the specific allegations being made against it, such that the 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.)

DISCUSSION

Student's original Complaint alleged nine claims, as follows: (1) District denied Student a free and appropriate public education (FAPE) for the 2007-2008 school year; (2) District denied Student a FAPE for the 2008-2009 school year; (3) District's action on and after May 27, 2009 will deny student a FAPE for the 2009-2010 school; (4) District is not placing student in the least restrictive environment in violation of the Individual with Disabilities Education Act (IDEA); (5) District's failure to timely respond to Student's request of September 26, 2007 for an initial evaluation was a denial of a FAPE; (6) District's interim placement of student for two years does not constitute a proper referral under IDEA; (7) District's failure to properly assess student in all suspected areas of disability since September 2007 constitutes a denial of FAPE; (8) District's distribution of ABA hours denied Student a FAPE ; and (9) District's referral to "I Can Too" denied Student with a FAPE because "I Can Too" failed to provide student with the proper related services in violation of IDEA.

The facts alleged in Student's original 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.

However, Student's Request to Amend stated that Student wanted to strike all compliance issues from Student's original complaint that occurred within the past year. Student did not identify which issues in the original complaint were stricken and which remained. Therefore, Student's amended complaint does not contain sufficient factual allegations to provide the required notice to District because the District would need to guess the issues remained for hearing and the issues that Student dismissed.

¹ All statutory citations are to Title 20 United States Code unless otherwise noted.

As discussed above, a responding party 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 the responding party may be able to prepare a response, prepare for a resolution session, or prepare a defense for hearing. Student's amended complaint fails to provide this notice because the issues that remain for hearing are not clear.

Pursuant to Education Code section 56505, subdivision (e)(6), a parent who is not represented by an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. If Parents request the assistance of a mediator in identifying the issues, they should contact OAH immediately in writing.

ORDER

1. Pursuant to section 1415(c)(2)(D), Student's amended complaint is insufficiently pled.
2. All mediation, prehearing conference, and hearing dates in this matter are vacated.
3. Pursuant to section 1415(c)(2)(E)(i)(II), Student shall be permitted to file a second amended complaint.² All issues against the District for hearing shall be contained in the second amended complaint.
4. The second 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.
5. If Student fails to file a timely second amended complaint, Student's complaint will be dismissed.

Dated: July 27, 2009

/s/

TRINA A. HIRSIG
Administrative Law Judge
Office of Administrative Hearings

² The filing of an amended complaint will restart the applicable timelines for a due process hearing.