

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS on behalf of STUDENT,

v.

FAIRFIELD SUISUN UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2009070005

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On June 30, 2009, attorney Natashe Washington, on behalf of Student, filed a Due Process Hearing Request (complaint) against the Fairfield Suisun Unified School District (District).¹ On June 14, 2009, Andrew M. Green-Ownby, District's Director of Special Education, filed a Notice of Insufficiency (NOI) as to Student's 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);² 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

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.

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 three issues against the District. The issues involve the District's purported denial of FAPE by failing to assess Student in all areas of suspected disability and failing to adequately address Student's socio-emotional and visual processing deficits in her individualized educational programs.

Regarding Issue One, Student's complaint contains sufficient factual allegations to support her claim that the District did not assess Student in all areas of suspected disability because Student alleges the District's assessments did not address Student's increased anxiety and her visual processing and visual integration deficits. This claim is sufficient to put the District on notice of the issues forming the basis of this claim.

Regarding Issue Two, paragraphs two and three, Student's complaint contains sufficient factual allegations to support her claim that the District denied her a FAPE by not providing her with services to address her anxiety at school and not preparing a transition plan for Student's move from elementary to middle school. These claims in Issue Two are sufficient to put the District on notice of the issues forming the basis of these claims.

Regarding Issue Two, paragraph one, Student's complaint does not contain sufficient factual allegations because the complaint does not state why she requires transportation to and from school. Regarding Issue Two, paragraph four, Student's complaint does not contain sufficient factual allegations because the fact that Student attended a combination fourth and fifth grade classroom does not automatically mean that the District could not meet Student's unique needs, and Student fails to explain how her needs were not met as a result of her placement in that class.

Regarding Issue Three, Student's claim for compensatory education is a proposed resolution for the District's purported denial of FAPE in Issues One and Two, and not a distinct allegation that the District denied Student a FAPE.

Student's Issue One and Issue Two, paragraphs two and three, are sufficiently pled to put the District on notice as to the basis of Student's claims.

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 complaint fails to provide this notice in Issue Two, paragraphs one and four.

ORDER

1. Pursuant to section 1415(b)(7)(A)(ii), Issue One and Issue Two, paragraphs two and three, of Student's complaint are sufficient. Student's Issue Three is sufficient as a proposed resolution.

2. Pursuant to section 1415(c)(2)(D), Issue Two, paragraphs one and four, and Issue Three of Student's complaint are insufficiently pled. Issue Three is sufficiently pled as a proposed resolution, however.

3. Pursuant to section 1415(c)(2)(E)(i)(II), Student shall be permitted to file an amended complaint.³

4. 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.

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Student's Issue One, Issue Two, paragraphs two and three, and Issue Three, as a proposed resolution.

Dated: July 20, 2009

/s/

PETER-PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings

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