

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT on behalf of STUDENT,

v.

ESCONDIDO UNION HIGH SCHOOL
DISTRICT AND CALIFORNIA SCHOOL
FOR THE DEAF

OAH CASE NO. 2009070063

DETERMINATION OF SUFFICIENCY OF
DUE PROCESS COMPLAINT

On June 29, 2009, Student filed a Due Process Hearing Request¹ (complaint) naming Escondido Union High School District (District) and California School for the Deaf (CSD).

On July 14, 2009, District filed a Notice of Insufficiency (NOI) as to Student's complaint. On July 15, 2009, CSD filed a Non-Opposition to District's NOI.

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 four issues: That the District failed to provide Student a FAPE in the least restrictive environment for the 2007-2008 school year, the 2008 extended school year (ESY), the 2008-2009 school year, and the 2009 ESY.

Student alleges as his first issue that he was not offered a FAPE for the 2007-2008 school year. He alleges that "the program that was offered by the district as FAPE did not actually provide educational benefit" to Student, and that Student "did not make gains educationally or socially." Student fails to state what program District offered, why it was inadequate, and what needs of Student's it failed to meet. Student references an IEP team recommendation "at the end of this school year" that he attend the CSD in Riverside, but does not state how that relates to his claim. Student fails to describe any specific problems that occurred in the 2007-2008 school year. In order to enable the other parties in this matter to prepare for hearing, Student needs to explain what special education or related services he should have received, and whether or how the lack of special education and related services denied him an educational benefit.

As Student's second issue, Student alleges that during the 2008 ESY Student attended CSD in Riverside and that parents voiced concerns about Student not having the support he needed to be successful. Student does not identify the supports and services that Student sought or believed he was entitled to. Again, Student needs to explain what special education or related services he should have received, and whether or how the lack of special education and related services denied him an educational benefit.

Student's third issue, in which Student alleges a denial of a FAPE claim for the 2008-2009 school year, is based on his allegation that the program provided by District did not provide educational benefit, and that Student did not make any gains educationally or socially. Student claims that District used a "cookie-cutter" approach and did not design a program to meet his unique needs. As with the first issue, Student fails to state what program District offered, why it was inadequate, and what needs of Student's it failed to meet. Student fails to describe any specific problems that occurred in the 2008-2009 school year. In order to enable the other parties in this matter to prepare for hearing, Student needs to explain what special education or related services he should have received, and whether or how the lack of special education and related services denied him an educational benefit.

The same discussions from above apply to the ESY for 2009. Student needs to explain why the program offered by District was inadequate, what special education or related services he should have received, and whether or how the lack of special education and related services denied him an educational benefit.

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 meeting, or prepare a defense for hearing. For the reasons described above, Student's complaint is insufficient because it does not comply with the requirements of Section 1415(b)(7).

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 resolution is a request for placement at CSD in Riverside with support and services, including defined instruction, a teacher for the visually impaired and a trained aide for the entire school day. This proposed resolution stated in Student's complaint is sufficient to meet the statutorily required standard of stating a resolution to the extent known and available to him at the time.

Within the proposed resolution, Student requests several independent assessments, including vision therapy, psychoeducational, audiological, and central auditory processing.³ It appears that these requests may be separate issues, but because they are alleged as proposed resolutions, they will be considered proposed resolutions and not issues, if Student refiles them as such in an amended complaint. These proposed resolutions are sufficient to meet the statutorily required standard of stating a resolution to the extent known and available to him at the time.

In addition, Petitioner seeks prospective relief for independent evaluations for language and speech for the 2009-2010 school year. Again, it appears that this request may be a separate issue, but because they are alleged as proposed resolutions, they will be considered proposed resolutions and not issues, if Student refiles them as such in an amended complaint. This proposed resolution is sufficient to meet the statutorily required standard of stating a resolution to the extent known and available to him at the time.

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.⁴

³ Student also requests an AB 3632 referral to his local county department of mental health. This request should be made directly to the school district in writing and should be treated as a separate issue in an amended complaint.

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

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: July 16, 2009

/s/

TRINA A. HIRSIG
Administrative Law Judge
Office of Administrative Hearings